Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition for Emergency Relief	)	GN Docket No. 21-304
Due to COVID-Related Delays in	)	
3G Sunset Transition for Central	)	
Station Alarm Subscribers	)	

To: The Commission

REPLY COMMENTS OF AICC

Alarm Industry Communications Committee
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Summary

The record reflects that other industries engaged in safety-related activities face dire consequences unless there is an extension of the 3G data service termination of AT&T Mobility LLC and its affiliates. This harm would be brought about because the COVID-19 pandemic has caused significant delays in being able to replace 3G alarm signaling radios in customer premises for more than one year, and the worldwide microchip shortage has compounded the problem considerably. And just as it seemed the world was getting past COVID-19 shutdowns and social distancing, the Delta variant is reigniting those concerns. While AT&T has understandably made a number of arguments against an extension, these arguments do not demonstrate that an extension is unnecessary. The Commission has authority to order such relief, given the extraordinary circumstances faced by the alarm industry and others. The alarm industry has been working diligently to meet the AT&T 3G sunset and will continue to do so. However, as of today, more time is needed for the transition. The alarm industry remains open to discussions with AT&T to resolve this issue in a mutually acceptable manner, and is willing to revisit the extension timetable if experience shows that affected 3G users do not require the full ten months requested.

The record in this proceeding shows millions of safety related devices depend on the 3G network, besides alarm systems: "Ankle bracelet" monitors to track violent offenders; vehicle collision avoidance systems; vehicle roadside assistance systems; elevator emergency phones; and emergency radios for "lone worker" situations in the agriculture, oil and gas industries. In assessing the public interest balance of this matter, the Commission must consider the risk of true safety implications for millions of displaced users, due in large part to a pandemic and related microchip shortage that no one could have reasonably foreseen. Weighing against these adverse

safety consequences is only AT&T's desire to bring to a small fraction of its customers a "more robust" 5G service in less populated areas where it has not deployed its 5G+ spectrum, even though 5G on the 850 MHz spectrum will only give the customer a marginally better experience than the existing 4G LTE service. And in the event of a weak or blocked 5G signal, these customers will default automatically to AT&T's robust 4G service, or the taxpayer funded FirstNet LTE network to which AT&T has unique access.

Table of Contents

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REPLY COMMENTS OF AICC

The Alarm Industry Communications Committee and its constituent members (collectively "AICC") hereby submits its reply comments in the above referenced proceeding, which considers the May 10, 2021 Petition for Emergency Relief filed by AICC. As described below, the record reflects that other industries engaged in safety-related activities face dire consequences unless there is an extension of the 3G data service termination of AT&T Mobility LLC and its affiliates. This harm would be brought about because the COVID-19 pandemic has caused significant delays in being able to replace 3G alarm signaling radios in customer premises for more than one year, and the worldwide microchip shortage has compounded the problem considerably. And just as it seemed the world was getting past COVID-19 shutdowns and social distancing, the Delta variant is reigniting those concerns. While AT&T has understandably made a number of arguments against an extension, these arguments do not demonstrate that an extension is unnecessary. The Commission has authority to order such relief, given the extraordinary circumstances faced by the alarm industry and others. The alarm industry has been working diligently to meet the AT&T 3G sunset and will continue to do so. However, as of today, more time is needed for the transition. Therefore, AICC continues

to request that AT&T be directed to extend its 3G data service to ensure the continuation of alarm signal transmission from existing subscriber radios until December 31, 2022. The alarm industry remains open to timely discussions with AT&T to resolve this issue in a mutually acceptable manner, and is willing to revisit the extension timetable if experience shows that affected 3G users do not require the full ten months requested.

I. The Record Shows Significant Support for the Proposed Extension, Due to the Adverse Safety Impact of AT&T's 3G Sunset on Numerous Vulnerable Persons, Businesses and Facilities.

The record in this proceeding shows overwhelming support for AICC's requested extension of the AT&T 3G sunset, with the understandable exception of AT&T. First, multiple commenters cite important public safety and other interests in avoiding a premature shut down of alarm systems that depend on AT&T's 3G network. AICC's proposal is strongly supported by an alliance of several important consumer-oriented public interest groups, including Public Knowledge, Access Humboldt, the Benton Institute for Broadband and Society, the Center for Rural Strategies, and the Open Technology Institute (collectively, the "Public Knowledge Alliance" or "Alliance"). This group correctly points out:

> Loss of these services *may quite literally be a matter of life or death* for individuals that rely on the protections afforded to them by these services. Additionally, while smartphone adoption among older consumers is steadily increasing, elderly people are still significantly less likely to own a smartphone than younger consumers. This makes them disproportionately more likely to be in the group of consumers without a 4G or 5G enabled device, and thus at higher risk for losing service in a 3G shut-down. Finally, *low income consumers are also disproportionately affected by an unmediated 3G shutdown*. Individuals with low or fixed incomes are more likely to have older, inexpensive devices, or rely on inexpensive prepaid

> plans like Boost mobile and these devices and plans are reliant on 3G service.[1]

The Alliance further makes the important point that "Of the millions of Americans who rely upon 3G, many of them are people in particularly vulnerable or marginalized positions, including rural customers with limited accessibility, elderly people who may have fixed incomes and limited technological literacy, and low-income consumers who face price barriers in transitioning to the latest hardware and connectivity barriers in their communities."[2]

AARP, a consumer protection association for those over the age of 50, similarly notes the potential for dire safety consequences if the AT&T 3G sunset is not extended for alarm systems. First, AARP observes that "The PERS are utilized primarily by the elderly and other at-risk individuals who need the ability to reach first responders in situations where they may be unable to pick up a telephone and dial 911."[3] Then AARP makes the important observation that "Residential care settings have proven to be a high-risk environment for older Americans during the pandemic."[4]

Public awareness of the potential risks to alarm users is growing, as reflected in recent press coverage. See, e.g., Comm Daily, "Groups Back Delaying AT&T 3G Sunset", September 2, 2021, by Gabriella Novello; Fierce Wireless, "AT&T 3G sunset sets off alarms for monitor industry", August 19, 2021 by Monica Alleven.

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1 Public Knowledge Alliance Comments at p. 6 [*Emphasis supplied, footnote omitted*]

2 *Id. at* p. 4.

3 AARP Comments at p. 2.

4 *Id. at* p. 1 [footnote omitted].

More importantly, the record demonstrates that public support for the proposed extension extends beyond those depending on central station alarm service. One vital public safety service that stands to be compromised by AT&T's planned shut down is the offender monitoring service. Alcohol Monitoring Systems, Inc. ("AMS"), a supplier of electronic monitoring ("EM") devices and offender monitoring services to the criminal justice system, warns that:

> The Commission should vote swiftly to extend the 3G sunset, in order to prevent potentially tens of thousands of offenders ranging from sex offenders, child abusers, domestic violence offenders, gang members, drug dealers and drunk drivers from going unmonitored, and able to commit dangerous acts without detection. Unfortunately, the risk of individuals being unmonitored will be left to criminal justice agencies to respond to with alternate supervision strategies which may include incarceration. Women who are being protected from abusive domestic partners could be in grave danger. The public, including children, could be at risk from sex offenders. Crime victims and potential witnesses may be put in danger. Unmonitored violent felons may be able to escape detection, forcing the expenditure of untold resources on trying to re-capture them. All of these scenarios, and others, create an immediate and serious threat to public safety.[5]

Thus, in the absence of a grant of AICC's request, an immediate and substantial threat could be unleased on the public, forcing criminal justice officials to attempt to round up all of the affected offenders, and incarcerate them – in the middle of a pandemic which has become significantly more contagious, at a time when jails and prisons are being forced to shed prisoners in order to prevent COVID-19 deaths.

Similarly, The Alliance for Automotive Innovation ("Auto Innovators") filed comments advising the Commission that an extension of the sunset is needed to "provide automakers with the additional time required to manage or otherwise mitigate the impact

[5] AMS Comments at pp. 5-6.

on vehicle owners, drivers, and passengers with connected vehicle services that currently rely on 3G networks."[6] The connected vehicle services that could fail under the current AT&T shutdown plan include "automatic collision notification and other emergency response services, roadside assistance, navigation and real-time traffic information, and vehicle status and diagnostics information." All of these services are designed to protect the vehicle's occupants, and other drivers and pedestrians, from death and injury in the event of an accident, breakdown or other dangerous condition.[7]

The risk of other threats to life and safety are emerging in the press, as the public focuses on the 3G shutdown's potential impact:

> Despite the imminent closure of many of the major 3G networks in the U.S., many cellphone users rely on a 3G connection. In May 2019, Telit said that more than 80 million devices still use 3G networks in North America. Even as carriers are phasing out 3G connectivity for cellphones, devices such as mPERS units, in-vehicle cellular modules, roadside highway call boxes, and emergency communications for elevators cling to 3G connectivity. . . Lone workers in agriculture, oil and gas, and other industries also employ 3G mPERS devices for tracking and safety in the field.[8]

See also Forbes, "As Consumers Embrace 5G, Businesses And Organizations Must Transition To 4G", M. Gould, September 2, 2021(noting that "A significant number

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6 Auto Innovators Comments at p. 1.

7 See also "The switch to 5G wireless could shut down SOS buttons in millions of cars", September 24, 2020, Los Angeles Times. https://www.latimes.com/business/story/2020-09-24/column-5g-wireless-car-emergency-systems

8 "3G Sunset Spells Trouble for Many Medical Tracking Devices", March 14, 2021, By Dan Jones https://www.eetimes.com/3g-sunset-spells-trouble-for-many-medical-tracking-devices/

of industries that are critical to our nation's safety infrastructure could be impacted by the 3G sunset.");[9]

In a case of extreme irony, the press is reporting that the 3G sunset is likely to exacerbate the supply chain issue that is so drastically confounding the 3G retrofit effort, as well as so many other aspects of American life and safety:

> The truck carrying high-cost cargo across the country disappears from the tracking dashboard. . . Over at the Port of Los Angeles, the shipper's long-awaited goods probably arrived, but the freight forwarder doesn't know for sure because no data is transmitting.[10]

A variety of consumer devices will also stop working upon the 3G sunset.[11] As Public Knowledge Alliance observes, "Research indicates that between 15 and 20% of wireless users are still primarily or entirely reliant on 3G for wireless service."[12] CTIA indicates that today there are approximately 468.9 million wireless connections in America,[13] so 15 to 20% of that figure is in the range of 70 to 90 million devices. A substantial portion of those devices will subscribe to AT&T service. Therefore, whatever action the Commission takes in this proceeding will affect an enormous number of consumers, and not just those served by the alarm industry. In assessing the public

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9 https://www.forbes.com/sites/forbesbusinesscouncil/2021/09/02/as-consumers-embrace-5g-businesses-and-organizations-must-transition-to-4g

10 "What 3G's sunset means for tracking, visibility tech", August 31, 2021 https://www.supplychaindive.com/news/3G-sunset-IoT-tracking-visibility-supply-chain/605775/

11 See, e.g., "Kindle 3G e-readers will stop working in 2022 in the US", June 8, 2021 By Michael Kozlowski https://goodereader.com/blog/kindle/kindle-3g-e-readers-will-stop-working-in-2022.

12 Public Knowledge Alliance Comments at p. 3.

13 https://www.ctia.org/news/2021-annual-survey-highlights.

interest balance of this matter, the Commission must weigh AT&T's planned shutdown against the risk of true safety implications for displaced users, due in large part to a pandemic and related microchip shortage that no one could have reasonably foreseen. As detailed above and in the record of this proceeding, on this side of scale, the potential risks affect:

- Tens of millions of Americans depending on 3G-based alarm systems for protection from fire, home invasion, carbon monoxide poisoning, and other threats, including numerous low income and otherwise vulnerable persons.

- Millions of American businesses, hospitals and government facilities depending on 3G-based alarm systems for protection from these same threats to their employees, customers and members of the public that use their services.

- Over a million elderly Americans, half of which are dependent on Medicaid, who rely on 3G-based PERS and m-PERS systems to allow them to live independently at home during the pandemic (thereby avoiding the fate of so many that have died of COVID-19 in nursing homes), while still being able to summon help if they fall or suffer a medical emergency.

- The public at large, who need protection from sex offenders, child abusers, domestic violence offenders, gang members, drug dealers and drunk drivers that could go unmonitored, and able to commit dangerous acts without detection if their 3G based electronic monitors stop working.

- Millions of motorists and their passengers, who depend on 3G based vehicle services that help them automatically avoid potentially deadly collisions, summon help in the event of a crash or medical emergency via emergency response services, avoid becoming a secondary collision victim in the event of a breakdown via roadside assistance, etc.

- Stranded motorists in need of roadside highway call boxes.

- Members of the public in need of 3G based emergency communications in elevators.

- Lone workers in agriculture, oil and gas, and other industries that employ 3G devices for tracking and safety in the field.

On the other side of the ledger is AT&T's desire to bring to a small fraction of its customers a "more robust" 5G service in less populated areas where it has not deployed its C Band or Millimeter Wave spectrum, even though 5G on an additional 10 MHz of 850 MHz spectrum will only be marginally better than the existing 4G LTE service to which these customers would otherwise default automatically.[14] See Statement of Dominic Villecco, Attachment A hereto. Again, AICC supports the movement to 5G, and understands AT&T's urgency to improve its customer experience. But the 5G phones and devices of AT&T's customers will still be able to summon help in the event of an emergency over the ten months of an extension, either on the 10 megahertz of cellular bandwidth already deployed for 5G, or on AT&T's excellent 4G LTE network, or on the FirstNet network. On balance, the safety of 3G users must be protected for a brief additional period, pursuant to the primary mandate of the Commission in Part 1 of the Communications Act of 1934.

II. The Commission has Clear Jurisdiction and Authority to Extend the 3G Sunset in the Midst of the Pandemic.

The Public Knowledge Alliance correctly observes: "The signatories recognize that the Commission reclassified mobile broadband as a Title I service in 2017, and reclassified text messaging services as Title I in 2018. Setting aside whether these

[14] AT&T notes that T-Mobile will be sunsetting its 3G service at approximately the same time as AT&T. However, the Department of Justice has raised serious concerns about the T-Mobile sunset. While these concerns focus on compliance with conditions imposed in connection with the T-Mobile-Sprint merger, those conditions relate to the same sort of concerns raised by the AT&T sunset: A premature loss of service to customers, especially low income and vulnerable members of the public. See "DOJ outlines 'grave concerns' over T-Mobile's 3G sunset plans", Politico, August 9, 2021 by John Hendel.

decisions are correct, the Commission has clear Title II authority over the CMRS CDMA network pursuant to 47 U.S.C. § 332(c)."[15] The Alliance further observes:

> It should be noted that the Commission has previously intervened in technology transitions in order to protect the public interest: the Commission intervened in the wireless analog sunset to set official deadlines and consider extensions of those deadlines; it regulated the digital television transition, including by obligating providers to temporarily continue analog service where in the public interest; and it has always taken an active role in other significant industry-wide changes and transitions.[16]

Yet in response to AICC's Petition, AT&T argues that the Commission has no jurisdiction to grant the termination of service delay sought in the petition.[17] AT&T's arguments boil down to assertions that its planned 3G sunset cannot be delayed (or 'stalled') pursuant to the Commission's Title II authority, and that Title I provisions do not confer Commission jurisdiction either.[18] These meritless arguments are discussed in turn.[19]

First, AT&T argues that it is not subject to Title II of the Communications Act because it does not provide common carrier services, but instead only private carriage services.[20] It claims that the "overwhelming majority of IoT connections … are provided

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15 Public Knowledge Alliance Comments at n. 17.

16 *Id. at* p. 13 [footnotes omitted].

17 *See* Opposition at pp. 6–9.

18 *Id.* at pp. 7–9.

19 Though AICC's Petition argues that Commission jurisdiction is conferred under Titles I, II and III of the Communications Act (see, e.g., pp. 19-21), AT&T makes no argument regarding the Commission's jurisdiction under Title III, apart from arguing that certain provisions of Title III fence off Title II jurisdiction here. The Commission's direct jurisdiction conferred under Title III, applicable to AT&T's planned discontinuance of service, is discussed separately *infra*.

20 *Id.* at p. 7.

pursuant to individually negotiated contracts with sophisticated business customers, not as part of "an indifferent holding out" to the public at large on standardized terms."[21] It claims that this type of offering is likewise true of "the overwhelming majority" of alarm connections.[22] AT&T relies upon a declaration of Lisa Park in support of its argument. Ms. Park claims in pertinent part: (a) that "the overwhelming majority of the companies' IoT connections" are individually negotiated; and (b) that the services are "inherently mobile in nature" though Alarm companies "may or may not use the included mobility features…"[23] Ms. Park concludes that AT&T's IoT services are point-to-point which, in general "does not, and is not intended to, enable an end user to communicate instead with… the public switched network."[24]

In sum, the Park Declaration attempts to establish the basis for AT&T's argument that (a) it is not a common carrier but instead a private carrier, and (b) it is also exempt from Title II regulation for its IoT services because such services are not interconnected with the public switched network, citing Sections 3(51) and 332(c)(2) of the Act.[25] These claims do not survive close examination. For instance, Ms. Park's claim that IoT service "does not" enable end users to communicate with the PSTN ("millions of endpoints") is simply not true.[26] The attached Declaration of George Brody states that AT&T's wireless

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21 *Id. [footnote omitted].* AICC finds it noteworthy that the discussion of "IoT" service mentioned in AT&T's Opposition does not define this service, nor does the Park Declaration provide any definition other than the unremarkable phrase, "Internet of Things."

22 *Id.*

23 *See* Park Declaration at p. 1.

24 *Id.* at p. 2.

25 *AT&T Opposition* at pp. 7–8.

26 *See* Park Declaration at p. 2.

IoT services are interconnected, through the PSTN, with alarm central stations through conventional POTS lines.[27] Against the requirements of Section 332(d)(1–3) of the Act, AT&T's so-called IoT service does not meet the definition of the term "private mobile service."

Specifically, and as Mr. Brody declares, the Personal Emergency Response System ("PERS") service supplied by his company delivers both voice and data service, which is then placed on to the PSTN for delivery to a central station. The call is seamless, similar to other wireless calls which may pass through multiple switches. Mr. Brody goes on to note that for certain other types of alarm systems, such as fire or intrusion detection systems, many use 3G cellular to send an alarm signal from the premise to a data center, then on to the central monitoring station for police or fire response via a POTS line.

As previously mentioned, AT&T argues that these are "point-to-point" services which are "categorically exempt" from common carrier regulation.[28] But the Commission has already rejected such a narrow interpretation of Section 332. In the *Mobile Services Second Report and Order*,[29] the FCC adopted a definition of interconnected service as one that provides the customer with the ability to send or receive messages over the public switched network, and it rejected an alternative proposal focused on the

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27 *See* Declaration of George S. Brody, Attachment B hereto.

28 AT&T Opposition at p. 8, citing Section 332(c) of the Act.

29 *See Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, Second Report and Order*, 9 FCC Rcd. 1411 (1994) ("*Mobile Services Second Report and Order*").

customer's direct technological control over the sending of communications over that network. Thus, "interconnected service" is defined as:

> A service (1) that is interconnected with the public switched network, or interconnected with the public switched network through an interconnected service provider, that gives subscribers the capability to communicate or receive communication from all other users on the public switched network; or (2) for which a request for such interconnection is pending pursuant to Section 332(c)(1)(B) of the Communications Act, 47 U.S.C. § 332(c)(1)(B). A mobile service offers interconnected service even if the service allows subscribers to access the public switched network only during specified hours of the day, or if the service provides general access to points on the public switched network but also restricts access in certain limited ways. Interconnected service does not include any interface between a licensee's facilities and the public switched network exclusively for a licensee's internal control purposes.[30]

The Commission clarified the scope of the term "anywhere" on the public switched network when it said "if a service that provides general access to points on the PSN also restricts calling in certain limited ways (e.g., calls attempted to be made by the subscriber to "900" telephone numbers are blocked), then it is our intention still to include such a service within the definition of 'interconnected service' for purposes of our Part 20 rules."[31] It adopted this interpretation "because we do not wish to provide any incentive for a mobile service provider to limit access to the public switched network as a means of avoiding regulation as a CMRS provider."[32]

Thus, AT&T's strained argument that its IoT service is not interconnected pulls up short. Even if the service is restricted "in certain limited ways," it is still considered to

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30 *Id.* at Appendix A.

31 *Id*. at n.104.

32 *Id.* at para. 55.

be interconnected (and thus regulated CMRS service) to avoid a gaming of the system.[33] Indeed, AT&T's argument that the Commission lacks jurisdiction over 3G alarm systems because they are only capable of connecting a voice call to central station facilities relies upon an artificial distinction and is dangerous. By the same logic, this would eliminate the Commission's jurisdiction over important and life-saving innovations such as 911-only phones or "senior phones" because they are programmed to dial just one emergency number, or just a handful of important contacts, and are designed for simplicity and reliability. 3G alarm systems are similarly designed for simplicity and reliability. Congress intended for the FCC to reject such artificial distinctions when it revised Section 332 of the Act in the Omnibus Budget Reconciliation Act of 1993 and directed the Commission to achieve regulatory parity among services that are substantially similar.[34]

Equally weak is AT&T's argument that it is a private carrier in these circumstances (and is thus unregulated by the Commission). As previously referenced, the declaration of Ms. Lisa Park is proffered as the factual basis of this argument.[35] Based upon her declaration, AT&T argues that it provides the "overwhelming majority" of "alarm company connections" pursuant to "individually negotiated contracts". It further claims that it does not hold itself out to the public "on standardized terms."[36]

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33 *See Mobile Services Second Report and Order, supra.*

34 H.R. Rep. No. 111, 103d Cong., 1st Sess. 247-48, *reprinted in* 1993 U.S.C.C.A.N. 378, 575.

35 *See, e.g.,* AT&T Opposition at p. 7.

36 *Id*.

Upon information and belief, AICC is aware that (a) certain alarm company arrangements with AT&T are subject to provisions that specify that AT&T may sell its service to other resellers or outlets of any kind; (b) the alarm company has no rights to exclusivity; and (c) the company subscribing to this service will be subject to service plans and possible tariffs. AICC will be glad to explore further information about such arrangements with the Commission on an *in camera* basis if desired.

Against this factual background, one may fairly challenge AT&T's assertion that it is only engaged in private carriage for the alarm industry. Ms. Park only alleges that AT&T's contracts for alarm systems are "individually negotiated."[37] She also alleges that this class of service includes interconnected car services, vehicle telematics and trading services, and that these too are subject to individual negotiations.[38]

In *NARUC I*, cited by AT&T, the US Court of Appeals for the District of Columbia Circuit noted that common carriage "… does not mean a given carrier's services must practically be available to the entire public. *One may be a common carrier though the nature of the service rendered is sufficiently specialized as to be of possible use to only a fraction of the total population*."[39] The court went on to note that common carriers need not serve the "whole public" while private carriers "may serve a significant clientele."[40] In resolving the question as to whether Specialized Mobile Radio Service licensees were to be considered common carriers, the Court stated the following: "The

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37 Declaration at page 1.

38 Declaration at page 1.

39 *National Association of Regulatory Utility Commissioners v. FCC*, 525 F. 2d 630, 642 (DC Cir. 1976) (*Emphasis supplied*).

40 *Id. at* 642.

key factor is that the operator offer indiscriminate service to whatever public its service may legally and practically be of use."[41]

Later D.C. Circuit decisions have noted that the "line… has blurred" between common carriers and private carriers.[42] Indeed, in *Orloff*, the Court noted that Verizon did not depart from common carriage requirements when it engaged in individualized negotiations (such as those Ms. Parks claims to be the case here). And in *USTA v. FCC*, the Court found that a high-speed telecommunications network, barred by Iowa law from offering services to individuals and most private businesses, was still properly classified as a common carrier by the FCC.[43]

The *Cellco* decision, rendered after *USTA*, has now recognized that "common carriage is not all or nothing – there is a gray area in which although a given regulation might be applied to common carriers, the obligations imposed are not common carriage per se."[44] Importantly, the Court concluded that the Commission's determination that a regulation does or does not constitute common carriage classification deserves deference.[45]

AICC thus respectfully submits that AT&T's claimed status as a private carrier, and thus outside the reach of the Commission's Title II jurisdiction, cannot be credited. For instance, AT&T's claims to engage in individualized negotiations with the alarm

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41 *Id.*

42 *See Cellco Partnership v. Verizon*, 700 F. 3d 534 (DC Cir. 2012), citing *Orloff v. FCC, 352 F.3d 415, 418-19, (D.C. Cir. 2003).*

43 *See United States Telecom Ass'n v. FCC,* 295 F.3d 1326 (2002).

44 *Cellco,* 700 F. 3d at 541.

45 *Id.*

industry, and with these narrowband buyers generally, proves nothing. Common carriers have historically engaged in such individual dealings. AT&T's historic Tariff 12 offerings are but one example. Yet, no information was provided by AT&T about such "individualized negotiations". The indications that alarm industry customers may be subject to tariffs, or a choice among established service plans – – familiar to retail cellular customers – – do nothing to support AT&T's claim of private carriage. And, on the subject of AT&T's "holding out" practices, discussed as an integral part of common carriage analysis by both court decisions and the FCC, AT&T's comments are completely silent.

AICC respectfully urges the Commission to utilize the provisions of Title II to delay AT&T's plan to discontinue its 3G wireless service, since a premature shut down would harm millions of users that depend on the 3G network for important safety-related purposes. At the very least, such discontinuance of service in the middle of a pandemic can be reasonably determined to be a prohibited, unreasonable practice under Section 201(a) of the Act.

Though given short shrift in AT&T's Opposition, AICC's Petition identifies Commission authority for its Petition under Titles I, II and III of the Act. Titles II and III have previously been discussed in their ability to establish the Commission's jurisdiction to order a delay in AT&T's planned 3G shutdown. As to Title I, AICC's Petition discussed the foundational sections of the Act which give the Commission authority in "promoting safety of life and property through the use of wire and radio communications" (47 USC sec. 151) and in authorizing the Commission to perform "any and all acts, make such rules and regulations, and issue such orders, not inconsistent with

this chapter, as may be necessary in the execution of its functions." (47 USC sec. 154(i)). AICC's Petition discussed how both of these Title I sections authorize the requested delay in AT&T's planned cellular shutdown.

AT&T's criticism is that there is no "specifically delegated power" to which regulations protecting alarm companies could be considered "ancillary", quoting *Comcast v. FCC*, 600 F. 3d 642, 659 (DC Cir. 2010). See AT&T Opposition at 8-9. AT&T has overstated the case – considerably. The Commission has already found the authority in Sections 303(b) and 303(r) to anchor a data roaming requirement in the *Cellco* case. The language in Section 303(b) authorizing the Commission to "prescribe the nature of service" to be rendered by Commission station licensees is certainly as germane to the maintenance of continued cellular service as it is to roaming. Likewise, Section 201(a), requiring carriers to furnish communications "upon reasonable request" is equally germane to the continuation of service, and more importantly, the promotion of "safety of life and property" as the Commission is charged with doing in Section 151 of the Act.

Both *Comcast* and *Cellco* discuss the nexus of these specific statutory provisions with ancillary authority in Title I. But it is clear that Title I regulatory classification is not a stake in the heart of FCC jurisdiction. Indeed, some learned commentators have written that such classification may have conferred additional FCC jurisdiction in light of these decisions.[46] As AICC has argued in its Petition, the Commission has ample authority under Titles I, II and III of the Act to grant its Petition.

[46] See Journal of Internet Law, "What are the Bounds of FCC Authority Over Broadband Service Providers?", Lawrence Spiwak, Jan. 2015 at p. 16.

The Commission has not hesitated to use its authority to prevent discontinuance of service, and customer hardship.[47] The Commission's direct authority to delay the transition under Title III is discussed next.

As previously discussed, AICC's Petition for Emergency Relief not only relied upon Title II for Commission jurisdiction, but also upon Titles I and III to establish jurisdiction over AT&T's planned 3G discontinuance.[48] AICC has earlier noted that AT&T's Opposition is almost wholly silent as to the Commission's Title III jurisdiction,

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[47] Petition at pp. 22-23. Applying Title II regulation, the FCC "can delay grant of a discontinuance authorization if it believes an unreasonable degree of customer hardship would result." *In re Application of Verizon New Jersey Inc. and Verizon New York Inc*., 28 FCC Rcd 9198, 9201 (2013)("*Fire Island Order*"), *citing Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, First Report and Order, CC Docket No. 79-252, 85 FCC 2d 1, 146 (1980). While formal Section 214 procedures do not apply to the provision of wireless service, wireless common carriers are still subject to statutory obligations designed to protect their customers through fair and reasonable terms of service under Sections 201 and 202 of the Communications Act of 1934, as amended ("the Act"). Section 332(c)(1) of the Act provides that a person engaged in the provision of a service that is a commercial mobile service shall be treated as a common carrier for purposes of the Act.[47] Fair and reasonable terms of service include providing adequate notice, and implementing a discontinuance of service, in a manner that does not leave the customers with no service and no way to seamlessly transition to another service arrangement.

The Commission has on other occasions denied petitions to discontinue service until customers were able to find suitable alternatives, consistent with the public interest:

• *In re Corban Telecommunications Inc.'s Application to Discontinue Domestic Telecommunications Services*, Order, Comp. Pol. File No. 603, 17 FCC Rcd 18392, 18394-95, paras. 6-8 (WCB 2002) (requiring Corban Telecommunications, Inc. to continue providing service for 120 days certain interstate microwave transmission services to customers that objected on the record to the loss of such service, "subject to further extension if customers have not been able to obtain service or a reasonable substitute from another carrier, or if the public convenience and necessity is otherwise adversely affected by discontinuance").

• *In re e.spire Application to Discontinue Domestic and International Telecommunications Services*, 17 FCC Rcd 14785 (2002) (requiring e.spire to continue providing service to certain customers for "a reasonable period of time," and to take all necessary steps to facilitate their migration to other carriers.)

[48] AICC Petition at 19-20.

apart from arguing that Section 332 of the Act exempts AT&T's alarm-related "IoT" services from common carrier regulation.[49]

In contrast, the Comments of several public interest Commenters agree with AICC's Petition that the Commission has such authority under Title III.[50] The *Cellco* case discussed earlier makes clear the Commission's plenary authority under Title III. As discussed, the Court dealt with challenges by Verizon to automatic data roaming rules, adopted by the Commission. The Commission had identified its regulatory authority under Title III, Section 706 of the Telecommunications Act of 1996 and its ancillary authority.[51] Verizon challenged the Commission's reading of the Act in this fashion.

The Court began its discussion with the question of the "Commission's affirmative authority" under Title III.[52] It found Title III jurisdiction to be dispositive: "…we begin – and end – with Title III." It then discussed the Commission's "broad authority to manage spectrum…in the public interest."[53] It then examined Sections 303(b), 303(r), and then Section 316 of the Act. Section 303(b), found the Court, authorizes the Commission to "prescribe the nature of the service to be rendered by each of its licensed stations and each station within any class". Section 303(r) empowers the Commission, subject to the demands of the public interest, to "make such rules and

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49 *See* AT&T Opposition at 7-8.

50 See Comments of Public Knowledge Alliance Comments, at 12-13.

51 *Cellco* 700 F. 3d 534, 540-541

52 *Id*. at 540-541.

53 *Id* at 541, *citing Data Roaming Order* 26 F.C.C.R. at 5440, para. 62

regulations and prescribe such restrictions and conditions, not inconsistent with the law, as may be necessary to carry out the provisions of this chapter."[54]

The Court lastly discussed the Commission's authority under Section 316 of the Act, which empowers the Commission to modify existing licenses through rulemaking.[55] The Court addressed relevant precedent, noting the Commission's "expansive powers" confirmed by Title III[56] and found that the specific statutory provisions were sufficient to confer Title III jurisdiction: "…We think it's clear that the data roaming rule falls well within the Commission's Title III authority."[57]

AICC submits that the *Cellco* decision amply demonstrates the "expansive powers" enjoyed by the Commission under Title III. And, indeed the same sections of the Act there [*i.e.* Sections 303(b), 303(r) and 316)] can fairly be applied to support jurisdiction here. Section 303(b) allows the Commission to require AT&T's continuation of its 3G service for several months within its power to "prescribe the nature of the service." Section 303(r) provides the Commission the power to carry out its actions "as may be necessary." And Section 316 authorizes the Commission to "modify existing licenses" if required by the public interest, convenience and necessity. On this latter point, the *Cellco* Court found that the Commission's roaming rule constituted such a modification and that it was lawful.[58]

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54 *Id.* at 541.

55 *Id.*

56 *Quoting NBC v. United States*, 319 U.S. 190, 216, 63 S. Ct. 997 (1943).

57 *Id.* at 542.

58 *Id.* at 543.

Indeed, it may be reasonably argued that the automatic data roaming rule was a greater extension of jurisdiction than merely requiring that interim 3G service be continued. An FCC order requiring such continued service imposes no additional condition, as in the case of data roaming. Rather, AT&T would be ordered to refrain from discontinuing the service for an interim period.

In sum, the Commission has clear jurisdiction under Title III to prohibit AT&T's planned discontinuance of 3G service, as requested in AICC's Petition. AT&T has not argued otherwise. The Commission should find that it has such jurisdiction.

III. The Proposed Extension is Still Required

AT&T takes the position that it is "untenable" that the alarm industry has had problems accessing customer premises to perform 3G upgrades, and that it is equally untenable that alarm companies have had problems obtaining the microchips needed for the replacement 4G LTE alarm devices needed to meet the 3G sunset deadline.[59] AT&T largely bases these claims on investor calls by a few of the larger alarm service companies. Putting aside for a moment that Wall Street investor calls are traditionally optimistic, as companies seek to put their best foot forward, these calls do not refute the fact that the alarm industry has struggled gaining access to protected premises for 3G upgrades, or the fact that the worldwide microchip shortage has severely hampered the 3G retrofit as well. AT&T's arguments are addressed below.

[59] AT&T Opposition at pp. 14 and 22.

a. Access issues

AT&T argues that because the alarm industry has seen an uptick in new alarm system installations during the pandemic, that means alarm installers must be able to access protected homes and businesses to replace the existing 3G radios.[60] The calls in question took place at various times, as long ago as last year and as recently as May of 2021. It is noteworthy that much has happened even since May, including a worsening of the microchip shortage and a spike in the significantly more contagious COVID-19 Delta variant that has forced the Government to take drastic actions aimed at this new threat.[61] The Delta variant is so much more contagious than the original COVID-19 strain that even vaccinated persons are being infected in large numbers – and despite their vaccination, a number are being hospitalized.[62] This is the environment in which alarm installers must try to gain access to protected premises, if and when they can obtain replacement radios.

Moreover, AT&T's argument ignores the important difference between a new install and a retrofit, particularly with regard to customer motivations. As explained in the input of Vivint (one of the alarm companies involved in the investor calls cited by AT&T) to the Chairman of AICC (Attachment C hereto), there is a significant difference between installing a new system for a person that has decided that they need protection

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60 AT&T Opposition at p. 20.

61 https://www.npr.org/2021/09/09/1035149651/biden-will-require-vaccines-for-federal-workers-as-part-of-a-new-covid-strategy

62 https://www.cdc.gov/coronavirus/2019-ncov/variants/delta-variant.html; https://www.yalemedicine.org/news/5-things-to-know-delta-variant-covid.

services, versus an existing customer with a working alarm system that is genuinely concerned about allowing installers or others into their home:

> In response to Vivint's success in adding new subscribers during the pandemic, new subscriber growth is vastly different from service calls to existing homes and businesses. New subscribers have sought Vivint's solution to protect/enhance their home during an unprecedented time of heightened health and public safety concerns, and because of this, are willing to let technicians into their home or business to perform the installation. The motivations of homeowners who need new systems are not at all comparable to the motivations of existing customers who need to have the 3G upgrade performed. Even in non-pandemic times it is difficult enough to convince the customer that they need an upgrade and that they need to schedule a technician to perform the work in their home or business. The pandemic exacerbates the situation because they don't want to take the risk of potentially being exposed to Covid from a technician doing an upgrade that they likely do not understand is critical, despite our repeated and persistent communication.

Indeed, AICC's Petition (at p. 9) noted this dynamic: "Entering a home or business when the customer has requested a visit is a very different interaction than trying to push a replacement visit on a customer during the pandemic." And as highlighted by the attached declarations and letters to AICC from other alarm service providers, the inability to access protected premises has been a huge problem for the alarm industry, lasting much longer than the two months claimed in AT&T's opposition. Per the Declaration of Melissa Brinkman, Chief Executive Officer of Custom Communications, Inc. d/b/a Custom Alarm (Attachment D hereto), one of the several thousand smaller alarm service providers that make up the bulk of the alarm industry:

> With regard to AT&T's claim that the Covid-19 pandemic had only a brief impact on our ability to retrofit our current 3G-based customers: Following the pandemic shutdown, we saw customer cancellations and reluctance to schedule a replacement appointment from March into August 2020, which would not be considered a brief impact. While there was a brief easing in customer reluctance in late Summer 2020, the world-wide chip shortage and

> supply chain issues soon interfered with the replacement process. It is difficult to schedule retrofit appointments when we still do not know whether we will have the replacement radios on hand. Since March 2021 the supply chain issues have gotten worse and between the uncertainty of product availability and constant changing delivery dates, and more recently the spread of the Delta variant and overall growing concern of the impact of Covid, it is once again difficult to schedule appointments for the trickle of replacement radios we do receive, especially with business customers that are once again closing and/or limiting access to their buildings. Also, with the Covid-related labor shortage, it has been difficult for us to find and hire additional and/or replacement alarm installers.

The Declaration of Jeremy Bates, President of Bates Security in Lexington, Kentucky (Attachment E hereto) likewise confirms the difficulties that alarm service providers have had gaining access to customer premises, extending for at least eight months from the original COVID-19 shutdown, then resuming with the emergence of the Delta variant:

> Bates was able to begin retrofitting customer radios, but then its efforts have been considerably slowed by the Covid shutdown starting in March 2020. Covid concerns resulted in appointment cancellations from March 2020 until well into the Fall, and slowed customer acceptance of the retrofit process; and we still have a significant group of customers for which we have not been able to schedule a replacement appointment despite multiple tries. The emergence of new strains of Covid, and the very concerning non-stop discussion of those strains in the news cycle, have contributed to our continuing difficulties with the retrofit, with new scheduling problems. On the commercial (versus residential) side of our business, retrofitting 3G radios has been greatly hampered by the fact that many of the businesses we serve have simply been closed for many months.

Both of these alarm companies highlight not just the difficulty gaining access to retrofit residential customers, but the dynamic that many commercial customers had simply closed their businesses for months during the pandemic. Again, this meant time during the promised three year retrofit period that could not be productively used to accomplish the 3G upgrade ahead of AT&T's hut down.

Jeremy Bates' declaration also identifies another significant way in which COVID-19 has slowed the ability of alarm companies to upgrade their customers' 3G radios, again through no fault of the alarm industry:

> Another major problem caused by the virus has been its impact on our personnel. We have had a number of technicians miss significant stretches of work because they either caught Covid, or had to quarantine due to a possible exposure. More recently, we have suffered because of the severe labor shortage that the Covid shutdown has created. We have seen a significant turnover of our trained technicians, even though we have paid raises and bonuses to avoid that outcome. We have had a very difficult time hiring replacement technicians, and currently have had to settle for very inexperienced techs when we have been able to hire at all. Overall, we find ourselves in a place where customer reluctance is only part of the problem. Our difficulty in hiring replacement staff is another unforeseeable obstacle caused by Covid that will hurt our ability to meet the 3G sunset. And the Delta variant is once again keeping a portion of our already depleted workforce from performing installs.

Larger alarm companies were hindered in gaining access to protected premises to do the 3G upgrade. Per John Brady, Chief Operating Officer of Connect America/Lifeline, which is the largest Personal Emergency Response company in the United States:

> Just as the Pandemic unfolded, our companies spent millions on PPE (masks, booties, sanitizing fluids, gloves, etc) to try to make it safe for our installers to visit homes but to no avail - so, in fact, the Pandemic had a significant impact on our ability to transition our subscribers to the new 4G technology and thus allow us to continue to maintain their safe and independent living space after the sunset. In fact, we did not lose only "two months" rather we lost over 9 months waiting for the US to get vaccinated. During this timeframe, and even today with the new Delta variant expanding, our subscribers seek to maintain their independence even more than before March 2020, while maintaining their distance and health. . . On the Commercial front - we could not even get into buildings for the majority of 2020 to retro the fire and intrusion systems that we all rely on for safe

keeping in our work environments.[63]

Why were there so many new alarm system installations during the past year and a half, and why would it be easier for alarm installers to access these premises? As AT&T notes, this was in part because so many more persons were at home most of the time, and therefore focused on their home. But more importantly, these persons were sitting at home, worried about a deadly pandemic, and watching unprecedented violence, unrest, arson and crime on TV. See, e.g., https://www.cnn.com/2021/04/03/us/us-crime-rate-rise-2020/index.html, April 3, 2021: "Major American cities saw a 33% increase in homicides last year as a pandemic swept across the country, millions of people joined protests against racial injustice and police brutality, and the economy collapsed under the weight of the pandemic — a crime surge that has continued into the first quarter of this year." These events have been accompanied in many places by a reduction in police resources, the early retirement of many police officers, and tremendous difficulty in recruiting new ones.[64] Therefore, many citizens are highly motivated to allow an alarm installer into their home to install the protective services that seem much more important to many Americans than even eighteen months ago.[65] See Declaration of Melissa Brinkman (at p. 2), addressing the concerns of Custom Alarm's customers, especially the many that work in the healthcare industry during the pandemic:

> In the midst of a pandemic (in which the children of healthcare workers and others must be home on their own much more), a spike in crime, and other potential threats, it is vital that the citizens of Rochester and the surrounding

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[63] See September 13, 2021 letter from John Brady to AICC Chair Louis Fiore (Attachment F hereto), at p. 2.

[64] https://www.npr.org/2021/06/24/1009578809/cops-say-low-morale-and-department-scrutiny-are-driving-them-away-from-the-job.

[65] See e.g., Declaration of Jeremy Bates at p. 2.

> areas, have access to reliable alarm services to detect potential dangers such as fire, home invasion, carbon monoxide poisoning and other environmental threats.

See also, September 13, 2021 Letter from Jack Unroe, CEO of Bay Alarm to Louis Fiore, Chairman-AICC (Attachment G hereto):

> Yes, the signing of new subscribers has increased during the pandemic. But these are home and commercial building owners who have affirmatively determined that the pandemic and increased street violence necessitate upgraded security. In the case of business owners, the need for added security was heightened as they were away from their businesses for longer periods of time and for homeowners, they felt the need for added protection because their families were spending more time at home. This is fundamentally different from existing customers who have working security systems and who are fearful and can see no reason during the pandemic to allow a technician into their home or business during a deadly pandemic to switch out a radio that will work till next year. These customers believe that the risk is not worth the reward and that we can simply come out and replace the radio when the pandemic is over. Unfortunately, there just isn't enough time to replace these radios when the pandemic is over – whenever that happens. Not to mention the fact, that the number of new installations is a fraction of the number of existing radios that need to be replaced. … There remains a core group of subscribers that are simply not allowing even a fully vaccinated technician into their premises.

AICC pointed out in its Petition (at pp. 11-12) that AT&T and the rest of the cellular industry (through CTIA) had recognized the access difficulties created by COVID-19, when asking for an 18-month delay of their Z-axis testing requirement. AT&T now argues (Opposition at p. 21) that "the wireless industry did not argue that it missed the Z-axis deadline because COVID-19 made homeowners fearful of technician visits. The industry argued that it missed the deadline largely because the commercial owners of certain large multi-story buildings—the planned "test beds" for experiments on vertical-coordinate technologies—had little incentive to host the planned experiments and were "largely unresponsive" to requests for access to those buildings, some of which

were closed." This does not change AT&T's recognition on the record that "certainly, no one could have foreseen the impact [the pandemic] would have on every aspect of the commercial and social lives of all Americans, and indeed populations across the globe." *See Id.* In the commercial setting, that impact means closed buildings. In the residential setting, that impact means cancelled appointments. The outcome is the same, namely an inability to timely gain access; and the alarm industry must deal with both commercial and residential access issues. The cellular industry had difficulty gaining access to 450 buildings, and asked for an 18-month extension due to COVID-19. The alarm industry has been dealing with the replacement of *six million* radios and is asking for only a ten-month extension.

AT&T makes the claim (Opposition at p. 2) that the alarm industry created its own problem by "dragging its heels" on the 3G upgrade. The attached declarations and letters show that this is not the case. This claim is perhaps best addressed by the Declaration of George S. Brody, Division Vice President Telular AMETEK ("Telular"). Among products and related services that Telular provides to members of the alarm industry are wireless alarm systems for commercial, residential, fire and personal emergency response system (PERS) services. More than 6000 alarm service providers, local, regional and national from small business owners to Fortune 1000 companies utilize Telular equipment and service. As Mr. Brody observes:

> With regard to AT&T's claim that the 3G sunset crisis is due to the alarm industry's "dragging its heels": Following the transition from 2G to 3G, Telular immediately turned its attention to working on an alarm device that could operate on both 3G and 4G, in anticipation of the next transition. Well before AT&T's announcement of its 3G Sunset, Telular completed development and approval of the Telular TG-1 Express LTE 3G/4G device, as well as other models, which can migrate to LTE once 3G service ends

> without a truck roll. Telular has sold these devices in large numbers to many of its customers, and thereby has helped to limit the number of alarm systems that must be retrofitted by the 3G sunset. However, in anticipation of the 2G sunset, Telular had already sold hundreds of thousands of replacement 3G units (as AT&T and the FCC contemplated it should do). Most of these units remain on the air and must be transitioned. Thus, Telular worked with its thousands of alarm company providers to be proactive with regard to the 2G sunset; and then was once again proactive (along with its customers) in anticipating the 3G sunset.
>
> However, unlike cellphones and tablets which have an average life of only 18 months, most alarm devices are permanently installed in the protected premises and designed to last 10 years or more. Therefore, the 3G devices that Telular customers installed in anticipation of the 2G sunset are still operating. Fortunately, every 3G/4G Telular device sold, starting prior to AT&T's announcement of its 3G sunset, has helped to reduce the scope of the 3G retrofit problem.

Thus, Telular (a major alarm equipment manufacturer) and the 6000 alarm service providers it works with took very proactive steps to embrace the 3G to 4G transition, and minimize the number of retrofits needed. However, there were still a large number of 3G radios installed in connection with the 2G transition. This refutes any notion that the alarm industry was dragging its heels.

AT&T further argues (Opposition at p. 21) that "some alarm-system upgrades do not even require in-person technician visits to begin with. As AICC acknowledges (Pet. 7-8), the CellBounce device—a wireless adapter that converts incoming 3G signals into outgoing 4G signals—is a do-it-yourself solution that allows customers to upgrade their alarm systems without technician visits. The same is true of most 'personal emergency response systems' (PERS), such as pendants or watches equipped with emergency buttons." The alarm industry wishes these two scenarios could offer greater relief in accomplishing the 3G retrofit. Unfortunately, as detailed in AICC's Petition at p. 8, the CellBounce solution which the alarm industry worked on as a partial solution for 3G

upgrades has not had a significant impact because the microchip shortage greatly hindered what was going to be a limited start up production run to begin with. AICC also notes that the CellBounce technology was not approved by AT&T for use with its network until February 2021, which also slowed production.

As for PERS units, unfortunately the majority serviced by the alarm industry do require a truck roll. As detailed by John Brady of Connect America/Lifeline (the largest PERS company in the United States) in Attachment F: "80 percent of PERS users are over 78 years old. We have found that while some PERS devices are plug and play, it is irresponsible, risky and often against the wishes of family and/or care agency to ship a replacement unit to a person that is usually greater than 78 years of age and expect them to not only install it correctly but also figure out how to use it. In fact, Medicaid requires that PERS users covered by Medicaid have installation and training."

AT&T also argues (at p. 22) that "even if some small fraction of elderly customers do need an in- home visit from a technician to make use of PERS products, they are likely to be vaccinated and familiar with further risk-mitigation protocols such as ventilation and mask-wearing". That did not help alarm industry before mass vaccinations, and then during chip shortage. Widespread vaccinations for elderly living at home did not start until after January 2021 – ten months after the national COVID-19 shutdown – and took several months to reach the levels of vaccination cited by AT&T in fn. 53 of the Opposition. See (https://www.kff.org/coronavirus-covid-19/issue-brief/vaccinating-older-adults-in-the-us-against-covid-19-a-work-in-progress/ : "In mid-January 2021, the Trump Administration advised states to expand vaccine eligibility to

people ages 65 and older – a population totaling more than 54 million . . .”). AICC is asking for a ten-month extension

Regrettably, AT&T tries to cast the alarm industry’s efforts to avoid harmful consequences for its customers as some sort of anticompetitive scheme. Thus, AT&T claims (Opposition at p. 5):

> Some [alarm companies] have simply prioritized those lucrative new customer opportunities over the less profitable task of keeping legacy 3G alarm customers connected after the 3G sunset. Only those alarm companies’ self-interested financial calculus, not a widespread inability to enter customerlocations, has delayed their progress towards that goal. . . The only plausible reason that some alarm companies prioritized the former activities over the latter was the greater profitability of the former; it had little or nothing to do with COVID access limitations.

This argument fails across the board. First, AT&T does not explain how extending service to a new customer is “more lucrative” than retaining existing customers. As noted in the Declaration of Melissa Brinkman:

> New customers in general generate about the same revenues as existing customers. However, it costs more to get new customers than to retain existing customers. Therefore, there is no incentive to ignore existing customers in favor of new customers. Instead, alarm service providers, especially small business providers, must both retain existing customers and provide protection to new ones in order to stay in business much less grow their business. This is especially true in a tight knit community like ours, where both our existing and new customers are our neighbors, friends and family; we see and interact with them on a regular basis in the community. [66]

Moreover, numerous alarm service providers confirm that they had taken steps to perform the required 3G upgrade; had started implementing the upgrade; and would have

[66] See Attachment D at pp. 2-3.

completed the upgrade by the planned AT&T sunset if not for the pandemic. See e.g., Bates Security: "And we can say with certainty that if there had been no pandemic, we would have been in a position to complete the retrofit."[67] While AT&T claims (at p. 3) that: "competition among alarm companies will induce each of them to make the upgrades needed to keep its customers connected", competition will not cause homeowners to allow installers into their home; will not open shuttered businesses (as AT&T learned with its Z-axis experience) or cause more microchips to appear.

But most importantly, the concept that alarm companies should have refused new customers during the worldwide pandemic is ridiculous, and is itself anticompetitive. First, as noted by Connect America/Lifeline: "even AT&T continued to compete in our industry for new customers." Second, as correctly observed by Bates Security:

> As AT&T is no doubt aware, no business can survive if it starts refusing customers, especially a small business such as ours in the middle of a pandemic that has harmed the U.S. economy a great deal. AT&T's suggestion would only result in more consolidation of the alarm industry, as small providers like Bates lose new customers and perhaps even fail, with their customers going to the largest providers. That would be an "anticompetitive" outcome. . . [M]ost importantly, we are in the business of life safety. Several of the new customers have been coming to us because they are concerned for their safety and health; and the virus, Covid recession, riots, arson and crime spikes throughout the Country have made alarm protection all the more important. We have expended substantial resources attempting to do the 3G retrofit, including significant equipment price increases, higher wages and bonuses, and trying to operate our business with frequent employee absences. Yet like many if not most alarm companies we are aware of, we are not charging our customers for the 3G upgrade. Instead, our focus is on avoiding a loss of protection of our customers from harms like fire, home invasion, carbon monoxide poisoning and medical issues.

[67] Attachment E hereto, at p. 2.

As observed by Custom Alarm:

> No small, much less large, business can survive by refusing to bring on new customers. And quite frankly that is not a business practice any business would adopt, I challenge anyone to take that approach and think they can stay in business. This is particularly true for Custom Alarm, since a significant portion of the persons needing our services work in healthcare. With all hospitals and other medical facilities, there is a constant influx of new employees. There is a constant flow of persons needing alarm services, and as a provider of safety-related services, it is Custom Alarm's duty to provide such protection. . . AT&T's suggestion that we stop accepting new customers, and the equipment acquisition process be turned into a bidding war, would only result in more consolidation of the alarm industry; and as a small provider, Custom Alarm would lose new customers and perhaps even fail, with our customers going to the largest providers. That would be "anticompetitive".[68]

It is cynical to suggest that meeting new customers' security needs in the middle of a pandemic, civil unrest and spikes in crime is a greed based, anticompetitive scheme. But to the extent that AT&T has raised the issue of anticompetitive actions, Bates Security and Custom Alarm put this claim in the correct perspective: They are in the business of life safety, during a national emergency declared by two U.S. Presidents. In contrast, AT&T is advocating an approach that calls for setting up an alarm industry "Hunger Games", where industry members must spurn protection of new customers while jostling for control of existing customers that need a 3G upgrade to avoid being exposed to the same safety risks as the potential new customers. This scenario would certainly favor the largest players, resulting in the anti-consumer outcome of alarm industry consolidation. The beneficiary of allowing a pandemic to consolidate the alarm industry would be AT&T, which would benefit financially with its 5G rollout by proceeding with the 3G shutdown despite its consequences; and as one of the largest

[68] See Attachment D at pp. 2-3.

companies in the U.S., AT&T is well positioned to pick up displaced customers. Unfortunately, the AT&T plan is also likely to leave families and businesses without protection for unacceptable periods of time, while the consolidation process plays out.[69]

The Public Knowledge Alliance has highlighted the risk of such anticompetitive impacts:

> In addition to harming consumers, an unmediated transition—with rushed, arbitrary, and disparate 3G shutdown dates—will likely harm competition both among alarm service providers and among wireless carriers. . . AT&T has a competing alarm service. If AT&T shuts off its network before rival alarm companies can complete their equipment replacement, this will create an opportunity for AT&T to win over these customers. To be clear, nothing suggests that AT&T is acting out of any anticompetitive motive. But motive is not relevant to the potential anticompetitive impact. The presence of this possibility may unconsciously influence AT&T's determination as to the urgency of the AICC request for additional time.[70]

In any event, AT&T's proposal is not the model of dealing with a pandemic that the Commission should follow. This is especially the case since, as discussed below, over the ten months of the requested extension, relatively few AT&T customers will benefit, and the quality of service they receive over the 10 MHz of cellular spectrum to be gained from turning off 3G service will be only marginally better than the 4G service they are already receiving.

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69 AT&T was not thrown to the competitive wolves when it asked the Commission to grant it emergency temporary authority to use another licensee's spectrum because the pandemic caused increased capacity demands for AT&T. https://www.fcc.gov/document/fcc-grants-att-and-verizon-temporary-spectrum-access-during-pandemic

70 See Public Knowledge Alliance Comments at p. 7.

b. Microchip issues

With regard to the worldwide microchip shortage, AT&T argues that AICC needs to show that (1) supply shortages affect the particular chipsets that alarm companies need for simple 4G connectivity and (2) the asserted shortages make those chipsets unavailable as opposed to simply more expensive.[71] The attached Declaration of George Brody confirms that Telular, a major alarm device manufacturer, has had great difficulty for a significant period of time obtaining the specific chips needed to make replacement devices:

> The microchip shortage has been a major issue for Telular for several months, as specific chips needed for Telular devices are among those affected by the shortage. The issue came to the forefront in March 2021, and has significantly deteriorated starting in May 2021. Our backorder for the components we need is approaching the entire number of devices sold by Telular in 2020, and is more than half of what we sold in the first half of this year. In the Third Quarter of 2021, Telular has received only approximately 60% of the radio modules it received in the Third Quarter of 2020. These radio modules use the Intel chip and are provided by Sierra Wireless.[72]

With regard to AT&T's claim that shortages are simply making the microchips more expensive but otherwise obtainable, Mr. Brody's Declaration demonstrates that this has not proven true, even for a manufacturer the size of Telular:

> Telular is a significant user of microchips, yet has not been able to obtain the needed supply of chips despite paying a premium mark up of chip prices.

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[71] AT&T argues that AICC has offered "nothing beyond breezy and unsupported lawyer assertions." AT&T Opposition at p. 6. However, the AICC Petition was signed by Louis Fiore, an engineer that has been in the alarm industry for decades, was Vice President of Engineering for an alarm company (National Guardian), is a past president of CSAA (now TMA) and has been the Chairman of AICC for the past few decades. In 1999, Mr. Fiore was appointed by President Clinton to serve on the "America Burning" panel, "to reexamine the evolving role of the fire services in the safety and sustainability of today's American communities." As noted in the Petition at p. 4, AICC's observations in the Petition are based in part on a survey of its members. AICC has also relied on input from several industry members ahead of drafting the Petition.

[72] See Attachment B at p. 2.

> Given the severity of Telular's supply issue, the company reached out to both Verizon and AT&T to try to obtain the thousands of chipsets it needs. Verizon was able to help us obtain only 262 units, even though Telular agreed to pay a greater than 50 percent mark- up. AT&T was unable to obtain any chipsets for Telular.[73]

The upshot of this chip shortage for manufacturers is the continued difficulties of alarm service providers to obtain the replacement radios needed for the 3G upgrade. This experience is borne out by Custom Radio:

> With regard to AT&T's claim that alarm companies can resolve the worldwide microchip shortage by simply paying more money for chips: Custom Alarm has incurred significantly greater costs obtaining replacement equipment, and paying these higher costs has not resulted in the company being able to obtain the equipment it needs to take care of our customers. Everyone from manufacturers to distributors to shipping/delivery companies have all enacted price increases and surcharges making it even more costly to complete these upgrades.[74]

AT&T also claims that alarm companies "might well have decided to focus their purchasing strategy on the chips necessary to wire new homes and sign-up new customers for lucrative long-term contracts." This claim is refuted by Vivint (Attachment C), as follows:

> In response to chip shortage challenges, the equipment used for a new install is not the same as is used for a 3G cellular upgrade. Entirely new panels were used for new installs. These had been ordered well in advance because Vivint controls its own production and can forecast what will be needed for new installs each year. The equipment used for 3G upgrades is just the cell radio and SIM card. These radios are specific to the older equipment where they get installed. These systems are different from what Vivint now installs for new customers. The 3G radio swaps are not considered a full upgrade that would use any of the full system stock. The radios are also common equipment used by other companies which are also trying to upgrade their 3G customers and sourced from the same manufacturers. The chip shortage

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73 *Id.* at p. 3.

74 Attachment D at p. 2.

> has limited the production of these radios and has also affected the number of customers that Vivint has been able upgrade to date.

Also, new customers amount to a small percentage of overall installs. See Jeremy Bates Declaration, Attachment E at p. 2.

Finally, AT&T (at p. 24) again seeks to make much of the fact that three of the larger members of the alarm industry have indicated on investor calls that they have had some measure of success with the supply chain issue. AICC notes that the investor calls in question did not establish that there would be no problems obtaining replacement equipment as needed to meet the 3G sunset. Instead, these calls mostly included optimistic, forward-looking language typical of such calls: For example, Alarm.com stated that "we feel like that will likely be the case [able to secure the supply chain] as we go into Q3 and Q4." And Vivent stated that "we've navigated through [the supply constraints] so far and feel very confident for the balance of the year." As indicated above, that does not mean these companies are past the 3G crisis, as Vivent indicates in Attachment C that "[t]he chip shortage has limited the production of these radios and has also affected the number of customers that Vivint has been able upgrade to date." Nonetheless, these companies do exhibit optimism about the task ahead. However, the progress of three of the thousands of alarm service providers in the U.S. does not evidence that the need for an extension of the 3G sunset due to the chip shortage is "untenable". Telular notes that the largest members of the industry may have more success obtaining microchips:

> Telular expects that certain of the largest members of the alarm industry order such a high volume of microchips that they may be able to influence their supply chain experience positively (just as AT&T has historically been

> able to do). However, Telular and the 6000+ alarm companies to which it provides equipment and services have not been able to obtain all of the microchips needed to meet AT&T's 3G sunset, and absent an extraordinary turnaround of world events this will not happen in a timely fashion. Moreover, even if all of the necessary chips arrived tomorrow, it will take months for Telular to manufacture the finished alarm systems and deliver them to its customers, and for its customers to gain access to all of their protected subscribers and install the new systems. Telular understands that other members of the alarm industry are in a similar boat. Therefore, it is absolutely clear that the extension of AT&T's 3G sunset requested by AICC is needed, in order to save lives and property.[75]

Telular's analysis is consistent with market analysis of the alarm industry:

> The U.S. Security Alarm Services industry is highly fragmented with a low market share concentration. The industry is primarily composed of a significant number of small businesses that often serve as subcontractors for market leaders. Therefore, ADT is easily the largest player in the market, producing about 15% of total industry revenue. *However, IBISWorld estimates that 82% of the industry total consists of businesses with less than 10 employees and 91.2% of the industry total consists of businesses with less than 20 employees*.[76]

Thus, the success of a few larger members obtaining chips, using their volume purchasing leverage, does not mean that the industry is able to secure all of the devices they need to meet the 3G sunset; and the experience of the 6000 alarm companies working with Telular indicates otherwise. To set policy based on the status of the largest few alarm companies will harm the lion's share of the industry, which is made up of smaller companies.

c. The Alarm Industry Has Acted in Good Faith and With Diligence

AICC has demonstrated that the alarm industry acted in good faith and with diligence in addressing the 3G sunset at all times. Upon receiving official notice from

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75 Attachment B at pp. 2-3.

76 https://investmentbank.com/security-alarms-smart-homes/ *[Emphasis supplied]*

AT&T that it was proceeding with activation of 5G and establishing a three-year transition period, alarm companies set about planning their transition, ordering equipment and implementing customer upgrades to 4G.[77] AT&T has not demonstrated otherwise.

AT&T (at p. 3) now argues that an extension is not warranted because "the alarm industry knew of this impending 3G sunset well before February 2019, when AT&T served official notice that it would hold firm to a 3G sunset date in February 2022 . . ." In this regard, AT&T claims (at pp. 12-13) that the alarm industry was put on notice of the 3G sunset in contracts that AT&T entered into with leading alarm companies in 2016, 2017, and 2018. Those contracts explicitly declared that AT&T's 3G network would "be made available at least until December 31, 2021."[78] This claim is specious. AT&T's transition from 2G to 3G was not completed until January 1, 2017. AT&T could not expect the alarm industry (or any industry using its 3G services) to begin replacing the 3G radios they had installed just months before, just because AT&T mentioned the possibility of an eventual transition in the boilerplate of a contract. Alarm devices normally have a life cycle of 10+ years, so it is not unreasonable for the alarm industry to start its replacement process when 5G became a reality and AT&T delivered its official announcement of the 3G transition window. AICC notes that many alarm companies, through their vendor relationship with Telular, were even more proactive prior to AT&T's February 2019 announcement, so that they could start using 3G/4G capable

[77] See e.g., Attachments D and E.

[78] Of note, AT&T does not claim that it notified all of the members of the alarm industry through such contracts.

alarm devices to limit the number of radios that would have to be replaced. See Attachment B hereto.

Additionally, the December 31, 2021 date AT&T apparently mentioned in certain contracts is only seven weeks prior to the current February 22, 2022 sunset date. Thus, the AT&T contracts in essence guaranteed alarm companies that they had until *at least* that date to implement 3G replacement. AT&T did not provide 5G using cellular at all until 2019, and did not by its own proclamation provide 5G nationwide until July 2020. Again, it was reasonable for alarm companies to assume that they could wait for the official pronouncement by AT&T in February 2019 that 5G was going to become a reality, and that it was time to start the 3G retrofit process within the 3 years that AT&T promised. Alarm companies attempted to honor that three-year window in good faith, but the worldwide COVID-19 pandemic has cut that time in half. The AICC Petition is simply asking that AT&T give it most of the three years originally promised.

If AT&T's contract boilerplate in 2016-18 is to be considered the starting gun for the alarm industry's 3G upgrade mandate, then it could be said that AT&T must start migrating its 5G customers now, and stop selling 5G devices, since China is already developing 6G, and 7G is on the drawing board. https://www.cnbc.com/2019/11/07/china-starts-6g-development-having-just-turned-on-its-5g-mobile-network.html; Insights into the development trends in 7G mobile wireless networks | Zenodo (https://zenodo.org/record/3930583#.YTU-J_eSncs). AT&T's interpretation is not reasonable or practical, would cause most wireless services to be in an unworkable state of flux at all times, and would be unduly expensive for consumers (especially vulnerable and low-income consumers). Despite unnecessary accusations to

the contrary, the alarm industry has dealt with AT&T in good faith to try to address the 3G sunset, but has suffered the fall out of a pandemic that has killed millions of persons, shut down the economies of most of the world, and created the need for a wide variety of extraordinary measures.

d. Other Safety Related Operations Need the Sunset to be Extended

As described above, several important wireless systems that help protect life and property are also dependent on AT&T's 3G service, for activities such as violent offender tracking, collision avoidance, roadside assistance, and protection of agricultural and oil/gas industry members working alone in remote areas. If to play the Devil's advocate we assume that the alarm industry was less than diligent in its 3G sunset efforts, the citizens that depend on these other 3G-based service for their safety will need an extension of the AT&T sunset deadline nonetheless.

IV. AT&T has Not Demonstrated that a Temporary Delay will Unduly Impact its 5G Service.

AT&T makes several claims as to why its remaining 850 MHz cellular spectrum must be converted from 3G to 5G use by February 22, 2022, despite the severe consequences for existing 3G users. AICC has undertaken a careful review of these claims, including an analysis by Dominic Villecco of VComm Telecommunications Engineering, Inc., who has worked in the wireless industry for 40 years, and previously served as Vice President of Engineering and Operations for Comcast Cellular Communications. See Attachment A hereto. Based on this analysis, it is apparent that AT&T can delay its 3G sunset for ten months without any substantial negative impact on its customers' experience, and without any risk to their ability to summon help in the

event of an emergency. Unfortunately, the same cannot be said of 3G-based alarm system users and others identified in the record as depending on 3G for their safety, if there is no delay. Each of AT&T's claims, evidenced in the Declaration of Kevin Hetrick, is reviewed below:

1. CLAIM: Any delay of the 3G sunset would impair AT&T's 5G rollout and degrade its network performance to the detriment of tens of millions of American consumers. Because 5G traffic volumes are rapidly escalating, AT&T plans to expand its 5G network capacity before year's end by adding blocks of C-Band (3.7 GHz) spectrum. The capacity increase, however, will not extend throughout AT&T's current 850MHz 5G footprint. Compared to low-band spectrum, the shorter propagation of C-Band signals reduces their ability to support communications in less populous areas, particularly for low- power uplink transmissions from handsets to towers. As a result, consumers passing near the edge of a C-Band coverage area will need to rely solely on 850 MHz spectrum for uplink 5G transmissions.

RESPONSE: First, AT&T is already providing 5G nationwide; and AT&T has already converted half of its cellular spectrum (10 MHz) to 5G. Therefore, the 3G delay requested by AICC will not prevent AT&T from deploying 5G. And in an article published earlier this year by Fierce Wireless, AT&T was named the fastest operator in both 4G and 5G, based upon testing performed by Ookla.[79] The question is whether AT&T will need the other 10 megahertz of 850 MHz band spectrum to handle an increase in traffic volumes during the ten-month extension period. In populated areas, AT&T has indicated that it is already deploying its high-capacity C-band spectrum, which should be more than adequate to accommodate traffic increases in such areas during the proposed 3G delay. As indicated above, the additional 850 MHz spectrum is for "less populous areas". In such areas, AT&T already has 10 MHz of 850 MHz spectrum provisioned for 5G – the same amount of spectrum with which it is currently serving New York, Chicago, Los Angeles and other major markets. It is highly unlikely that the same amount of low band spectrum with which AT&T is serving major cities in late 2021 will not suffice to handle the traffic in rural areas. Half of the states in the U.S. have a population density of less than 100 persons per square mile,[80] thereby qualifying as rural areas under the definition of that term in the Communications Act. With AT&T's access to C-band spectrum in larger markets, and sufficiency of AT&T's current resources in smaller markets to meet the near-term needs for its 5G users, the

[79] https://www.fiercewireless.com/operators/at-t-scores-fastest-5g-network-as-verizon-s-availability-drags-speed

[80] https://www.statista.com/statistics/183588/population-density-in-the-federal-states-of-the-us/

Commission can safely prioritize public interest considerations in the context of this proceeding.

2. CLAIM: The five-megahertz 850 MHz uplink channel currently dedicated to 5G, however, will be insufficient to support expected 5G traffic volumes during 2022. Doubling the 850MHz spectrum available in this manner will increase the 5G network's uplink and downlink capacity, greatly improving the performance and efficiency of AT&T's network for the benefit of its tens of millions of customers.

RESPONSE: First, as the Public Knowledge Alliance notes (at pp. 3-4) research indicates that 5G has an even lower adoption rate than 4G, with only around 1% of consumers using the newest generation of wireless network. And based on industry analysis of 5G growth, use of 5G devices during the ten-month extension in 2022 is reasonably expected to be only four percent. See VComm analysis at Section 6. Many AT&T devices being sold do not work on the 5G network or work only on AT&T's millimeter wave 5G spectrum. *Id.* This will keep traffic on AT&T's 850 MHz 5G system reasonable for the time in question.

Second, any traffic growth in this context will not be consequential for the ten-month delay, since the customer 5G experience on the low capacity 850 MHz will be only marginally better than 4G LTE, and will default to LTE in the event of 5G unavailability. See also VComm analysis at Section 4. The high volume 5G traffic is likely to be on C-band and Millimeter wave spectrum, which have the capacity to support spectrum intensive experiences that mark the expected innovation factor for 5G (embodied in AT&T's "5G+ services).

3. CLAIM: Continuing to reserve that spectrum for 3G is now grossly inefficient: 3G traffic today utilizes less than 4% of the capacity of that 10-megahertz block. In short, AT&Tcannot repurpose that critical 850 MHz spectrum for 5G until after it shuts down the 3G network.

RESPONSE: AICC is not trying to block the 5G transition, it is only seeking a brief delay it until existing users can safely transition. A number of inefficiencies take place during emergencies, such as AT&T's construction of towers under special temporary authority during the pandemic without going through the Section 106 process until after the fact.[81] The Commission's primary directive is to further safety of the public through telecommunications, especially in an emergency. AICC and other 3G safety operations are trying to save lives, while AT&T's focus is to "support a robust 5G rollout." (Opposition at p. 3)

4. CLAIM: The failure to upgrade AT&T's current 5x5 megahertz channels of 850 MHz spectrum into 10x10 megahertz channels would increase the rate of busy-hour "blocking" in cell sectors across virtually all geographic markets. In affected areas, the

[81] https://www.fcc.gov/coronavirus

result would be more blocked and dropped calls and a decrease in data throughput. Such network degradation could affect tens of millions of customers over the course of 2022 if this petition were granted.

RESPONSE: First, this statement by AT&T seems to indicate that its 5G systems operate as islands, and that lack of access to the 850 MHz spectrum leaves no other alternative but to degraded network performance. Since the latest 5G technology is essentially an extension of the 3GPP 4G LTE technology standard, these two technologies operate in harmony, allowing wireless networks and associated subscriber devices to automatically choose the best available technology and capacity to meet a subscriber's needs and enhance their connectivity experience. Further, while there are certainly differences between 5G technology and 4G technology, when these two technologies are operated with the same channel bandwidths, the customer experience is expected to be very similar. Testing performed by RootMetrics, referenced in an article in the Washington Post, highlights these findings. See VComm analysis at Sections 3-4. Thus, "dropped" calls should not be an issue, as the calls will take place on LTE.

Second, given the low number of existing and new 5G devices on the network during the immediate future, the likelihood of any theoretical "blocking" conditions is remote. Per VComm at Section 8: "Having such a network built and available, with only 12% of devices having the enabling technology, is analogous to a new highway, with no on-ramps. Until more on-ramps are built (i.e., increased 5G enabled device penetration), the highway will remain lightly traveled, albeit advanced infrastructure designed to carry new and offload existing traffic."

5. CLAIM: Although AT&T has spectrum holdings in other bands, it cannot repurpose them (instead of 850 MHz spectrum) for 5G within the foreseeable future. Instead, AT&T must continue using those bands to support an embedded base of tens of millions of customers—including alarm companies, other enterprise customers, and ordinary consumers—who rely on AT&T's 4G/LTE network for network connectivity. AT&T will need to maintain its 4G/LTE network on existing spectrum bands for years to come, given the sheer volume of devices in operation today that are not 5G-capable. Id. ¶ 8.

RESPONSE: As discussed in the VComm analysis at Sections 4 and 9, AT&T's robust, spectrum rich 4G/LTE network will be an asset that will prevent a poor customer experience for those 5G customers where only the 850 MHz band is available for 5G use. In the unlikely event that there are traffic issues, the 5G device should default to the LTE network. In addition, AT&T has the unique advantage of access to the taxpayer funded FirstNet 700 MHz LTE network, further ensuring that AT&T 5G customers will seamlessly migrate to LTE coverage if there are any 5G signal issues.

6. CLAIM: Granting the alarm industry's petition would subvert one of the Commission's greatest priorities: expediting deployment of the highest quality 5G services throughout America, including in suburban and rural areas.

RESPONSE: This claim is inaccurate, as shown above; AT&T is already advertising 5G nationwide; AICC is asking for temporary schedule adjustment to safely address the impact of the pandemic, just as America has had to make a number of adjustments due to pandemic. Schools and government offices closed for more than a year; businesses were either shut down or forced to operate under severe constraints, etc. AICC is simply asking for a maintenance of the *status quo* for a brief period, during which time AT&T's 5G customers in less populous areas should have plenty of capacity, and LTE as a nearly equal backup.

CONCLUSION

Numerous modifications have been made in government program requirements as well as business plans and practices to accommodate the devastating impact of COVID-19. The only public interest question in this proceeding is whether millions of people must be put at risk of death or serious injury, for the sake of giving AT&T's relatively small number of 5G customers a marginally better experience than LTE once they are out of range of 5G+ coverage. Section 1 of the Act does not contemplate this outcome. The alarm industry, which protects the life, safety, property, and health of over 30 million homes, businesses and homebound individuals, urgently requests that the Commission take the emergency measure of directing AT&T to delay its 3G sunset for 10 months, to December 31, 2022.

Respectfully submitted,

THE ALARM INDUSTRY COMMUNICATIONS COMMITTEE

By: */s/ Louis T. Fiore*_____
Louis T. Fiore, Chairman

By: */s/ John A. Prendergast*__
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Filed: September 14, 2021

Attachment A

Engineering Statement of
Dominic C. Villecco
Founder, V-COMM, LLC

ENGINEERING STATEMENT

OF

DOMINIC C. VILLECCO

SEPTEMBER 13, 2021

1. I, Dominic C. Villecco, have worked in the wireless industry for 40 years, designing and deploying networks as an operator and engineering consultant. I am the Founder of the Telecommunications Engineering firm, V-COMM, L.L.C., which I started 26 years ago. Prior to founding V-COMM, I was the Vice President of Engineering and Operations at Comcast Cellular Communications. In that role, I was responsible for the engineering and operations department, which built and operated its cellular networks. Since forming V-COMM, my firm has performed engineering services for all major wireless carriers as well as rural operators. My firm has also been intimately involved in large complicated Distributed Antenna System (DAS) networks in various venues around the United States. These networks support all major carriers with existing technologies up to and including 4G LTE, with current projects assisting clients upgrading to 5G technology. Finally, my firm is also a leading engineering and consulting firm in public safety communications, designing and implementing P25 networks, as well as assisting clients with augmentation of these networks with LTE technologies from AT&T/FirstNet, Verizon and T-Mobile, with the various offerings from each of these organizations.

2. The Alarm Industry Communications Council (AICC), has retained my firm to assist with a request to the FCC pertaining to the extension of AT&T's planned sunset of its 3G technology for 10 months, to December 31, 2021, from its current February 22, 2022 sunset date.

3. AT&T, in its Opposition to AICC's Petition for Emergency Relief[1], has stated it utilizes its 850 MHz "cellular" spectrum for both its legacy 3G technology as well as its nationwide 5G technology. These two technologies share this band, each with a DL/UL channel width of 10 MHz[2]. AT&T claims a failure to upgrade its current 850 spectrum to 20 MHz channels beginning February 2022, will increase the rate of busy-hour "blocking" in sectors across virtually all geographic markets[3]. This statement by AT&T seems to indicate that these 5G systems operate as islands, and that lack of access to this spectrum leaves no other alternative but degraded network performance.

4. Since the latest 5G technology is essentially an extension of the 3GPP 4G LTE technology standard, these two technologies operate in harmony, allowing wireless networks and associated subscriber devices to automatically[4] choose the best available technology and capacity to meet a subscriber's needs and enhance their connectivity experience. Further,

[1] AICC has filed a May 10, 2021 "Petition of Emergency Relief in 3G Sunset Transition for Central Station Alarm Subscribers", GN Docket No, 21-304. AT&T filed comments in Opposition to this Petition, dated August 30, 2021.
[2] See Declaration of Kevin Hetrick, AT&T Vice President of Access Construction and Engineering, attached as an appendix to AT&T's Opposition, page 1, "AT&T devotes only a narrow 10-megahertz sliver of 850 MHz spectrum to its 5G network in the form of paired 5x5 channels (five megahertz for downlink transmissions and five megahertz for uplink transmissions)."
[3] *id*., Page 3, paragraph 7.
[4] See https://www.tomsguide.com/news/who-has-the-best-5g-new-report-reveals-whos-up-whos-down The 3GPP Technology standard allows this transition between technologies. Further, RootMetrics, a leading nationwide testing firm is referenced in a Recent Article published by Tom's Guides: "RootMetrics calls "Everyday 5G," which combines test results for both 5G-only and 5G mixed mode where a phone switches between 5G and LTE during the same data activity. (That's increasingly common, the test firm says.)

while there are certainly differences between 5G technology and 4G technology, when these two technologies are operated with the same channel bandwidths, the customer experience is expected to be very similar. Testing performed by RootMetrics, referenced in an article in the Washington Post[5], highlights these findings.

5. In an article published earlier this year by Fierce Wireless[6], AT&T was named the fastest operator in both 4G and 5G, based upon testing performed by Ookla. In this article, it states AT&T 5G connections were achieved 18.4% of the time, indicating that these speed metrics were achieved through a combination of 4G and 5G connections. Therefore, AT&T has been able to achieve the honor of fastest network earlier this year, throughout its footprint, even though 5G connections were only achieved less than 20% of the time.

6. In order for the 5G experience to be realized by a majority of its subscribers, a wireless service provider would need to have significant 5G device penetration, to access the 5G portion of its network. According to PwC, 80% of the US population is expected to be covered by 5G technology by July 2021; however, only 12% of the mobile devices will be 5G enabled[7]. While available 5G devices like the popular Apple iPhone 12 and Samsung Galaxy S21 have 4G and 5G bands including 850 MHz (Band n5) and C-Band (Bands n77, n78 and n79), many other devices are still being actively sold that are 4G-only devices. In fact, on an AT&T preferred dealer website[8], devices such as the Apple iPhone SE, Apple iPhone 11 and Samsung Galaxy A12, are being promoted as affordable smartphones, even though all of these devices can only operate on 3G and 4G technologies. While the race to 5G is on for all carriers including AT&T, subscribers are not always as fast to take up new technologies, when high quality affordable devices are available that still offer a good level of service at an affordable price. This very phenomenon happened during each of the wireless technology transitions, as devices are typically upgraded through attrition every three or so years, and subscribers are often looking for a balance of value and new features. As a point of refence, Samsung introduced the A12 in August 2020[9], as a 4G-only device, even though AT&T announced its 5G network was available nationwide in July 2020[10], and according to the AT&T preferred partner website above, this device is still currently available to subscribers. Intuitively, these facts seem to back PwC's assertion that only 12% of devices would be 5G enabled by July 2021. PwC goes further to state that *"Our industry specialists expect 5G to hit a tipping point in 2023. That's because carriers and device manufacturers face the uphill battle of consumer upgrade cycles and deployment challenges as they work to make 5G real, exacerbated by COVID-19"* [11]. AT&T's 5G devices began their availability approximately in the January 2019 timeframe[12]. Over the 2.5 years from this AT&T

[5] See https://www.washingtonpost.com/technology/2020/09/08/5g-speed/
[6] See https://www.fiercewireless.com/operators/at-t-scores-fastest-5g-network-as-verizon-s-availability-drags-speed
[7] See https://www.pwc.com/us/en/industries/tmt/5g.html
[8] See AT&T Wireless Phone Plans - ATTWirelessOnline.com
[9] See Samsung Galaxy A12 Nacho Specifications, price - Specs Tech (specs-tech.com)
[10] See https://about.att.com/story/2020/att_5g_nationwide.html
[11] See https://www.pwc.com/us/en/industries/tmt/5g.html
[12] See https://about.att.com/pages/5G/announcements#:~:text=AT%26T%20First%20to%20Make%20Mobile,21 "View More" – December 5, 2018 "AT&T to Add Second Samsung Smartphone to Mobile 5G Portfolio in 2019".

press release to PwC's July 2021 forecast of 12% of 5G enabled devices, this run rate averages an approximate 4.8% increase in enabled devices per year. During the 10- month extension requested by AICC, this would amount to a 4% increase in devices.

7. AT&T has indicated that *"by year end 2021, it will begin expansion of its 5G network capacity by adding C-Band spectrum in increasing numbers of markets"* [13]. As outlined above, subscribers that have devices like the iPhone 12 and Samsung Galaxy S21, will have access to that expansion and enjoy the benefits of 5G technology, on channel bandwidths significantly greater than 10 MHz in certain markets, however, subscribers with new iPhone SE and Samsung A12 devices will have no access to this new C-Band offering, or the 850 MHz nationwide 5G currently offered by AT&T.

8. All wireless providers, including AT&T, have been promoting the promises of 5G technology for the past several years. These promises of a greater customer experience include much greater speeds and low latencies. These attributes have been demonstrated through both lab and field trials and have been achieved through the use of broad channel bandwidths upward to 100 MHz, and also mmWave frequencies with aggregated channel bandwidths of up to 800 MHz. AT&T is already providing this experience with its 5G+ mmWave service currently offered in 38 cities and more than 20 venues, with planned expansion to 40 cities and 40 venues by year end 2021, and further with its planned C-Band rollout is expected to be broadcast across 40 MHz of spectrum later this year[14]. Having such a network built and available, with only 12% of devices having the enabling technology, is analogous to a new highway, with no on-ramps. Until more on-ramps are built (i.e., increased 5G enabled device penetration), the highway will remain lightly traveled, albeit advanced infrastructure designed to carry new and offload existing traffic. In this case, the highway will be expanding in major cities and venues, locales that intuitively have more traffic. In rural areas, that are intuitively lighter in traffic, AT&T argues that its additional 10 megahertz of 850 MHz spectrum, if not converted beginning in February of next year, rather than December of next year, will suffer increased blocked and dropped calls. With 12% subscriber device penetration, and other 4G LTE spectrum available to those same customers, it is unlikely that holding off 10 months from its plan will have the detrimental effect AT&T claims, as 88% of its subscriber base will have devices that can only access its 4G network.

9. Unique to AT&T as compared to other wireless carriers, AT&T has access to an additional 20 MHz of spectrum nationwide through its FirstNet contract. This contract requires AT&T to build a 700 MHz nationwide interoperable network for public safety. Today, that network covers 2.71 million square miles and 99% of the US population, helping to narrow the rural digital divide[15]. This low band 700 MHz spectrum provides First Responders priority access for their public safety needs; however AT&T is able to use excess capacity for its other subscribers under its contract with FirstNet. In rural areas, where VHF and UHF spectrum is still used heavily for P25 Public Safety Networks, this excess capacity would have intuitively more availability than in congested

[13] See Declaration of Kevin Hetrick, AT&T Vice President of Access Construction and Engineering, attached as an appendix to AT&T's Opposition, page 1.
[14] See https://about.att.com/story/2021/full_5g_experience.html
[15] See FirstNet Expands, Now Covers More Than 2.71 Million Square Miles (att.com)

urban and suburban areas. This 5G device compatible technology and spectrum would be in the very areas AT&T claims to immediately need the additional 850 MHz spectrum converted from its 3G technology.

10. In summary, AT&T through its opposition, has claimed harmful network consequences if its 850 MHz spectrum were not converted to 5G technology over the 10 month extension requested by AICC. The current subscriber device situation is that 88% of devices cannot access this 5G technology anyway, and that during the extension requested by AICC, approximately 80% of AT&T subscribers will have NOT have 5G enabled devices. Therefore, the vast majority of AT&T's traffic will be carried on its 4G LTE network, thereby minimizing any affects on subscriber experience and promoting a public safety situation with AICC's customers.

Respectfully Submitted,

Dominic C. Villecco
President
V-COMM, L.L.C.

Attachment B

Declaration of
George S. Brody
Division VP, Telular AMETEK

DECLARATION OF GEORGE S. BRODY

I, George S. Brody, am Division Vice President Telular AMETEK ("Telular"), headquartered at 200 S Wacker Dr. #1800, Chicago, IL, 60606. Telular is a technology leader in IoT solutions for commercial telematics, and security and home automation. Among products and related services that Telular provides to members of the alarm industry are wireless alarm systems for commercial, residential, fire and personal emergency response system (PERS) services.

More than 6000 alarm service providers, local, regional and national from small business owners to Fortune 1000 companies utilize Telular equipment and service. We provide the following 3G-based cellular services:

- Data alarm services over the 3G network
- Video over 3G cellular services
- Commercial Fire data alarm services
- 3G cellular voice services for PERS devices

With regard to Telular's PERS system, when the customer presses the help button, the PERS device sends an alarm signal, and at the same time opens a voice channel to Telular's data center. The data center merges the two and sends them over a POTS line to the central station.

For certain other types of alarm systems, such as fire or intrusion detection systems, many use 3G cellular to send an alarm signal from the premise to our data center, then on to the central monitoring station for police or fire response via a POTS line.

Telular supports the May 10, 2021 Petition for Emergency Relief filed by the Alarm Industry Communications Committee (AICC) concerning the 3G sunset of AT&T, and would like to address some of the claims in AT&T's August 30, 2021 Opposition filing.

With regard to AT&T's claim that the 3G sunset crisis is due to the alarm industry's "dragging its heels": Following the transition from 2G to 3G, Telular immediately turned its attention to working on an alarm device that could operate on both 3G and 4G, in anticipation of the next transition. Well before AT&T's announcement of its 3G Sunset, Telular completed development and approval of the Telular TG-1 Express LTE 3G/4G device, as well as other models, which can migrate to LTE once 3G service ends without a truck roll. Telular has sold these devices in large numbers to many of its customers, and thereby has helped to limit the number of alarm systems that must be retrofitted by the 3G sunset. However, in anticipation of the 2G sunset, Telular had already sold hundreds of thousands of replacement 3G units (as AT&T and the FCC contemplated it should do). Most of these units remain on the air and must be transitioned. Thus, Telular worked with its thousands of alarm company providers to be

proactive with regard to the 2G sunset; and then was once again proactive (along with its customers) in anticipating the 3G sunset.

However, unlike cellphones and tablets which have an average life of only 18 months, most alarm devices are permanently installed in the protected premises and designed to last 10 years or more. Therefore, the 3G devices that Telular customers installed in anticipation of the 2G sunset are still operating. Fortunately, every 3G/4G Telular device sold, starting prior to AT&T's announcement of its 3G sunset, has helped to reduce the scope of the 3G retrofit problem.

Telular is aware of other alarm industry efforts to address the 3G sunset such as Cellbounce technology (which unfortunately has been hampered by the microchip shortage). Thus, it cannot be said that the alarm industry has intentionally dragged its heels on addressing the 3G sunset, trying to seek some sort of phantom financial benefit.

With regard to AT&T's argument that the alarm industry has been able to obtain all of the microchips it needs to meet the AT&T 3G sunset, this claim is inaccurate. The microchip shortage has been a major issue for Telular for several months, as specific chips needed for Telular devices are among those affected by the shortage. The issue came to the forefront in March 2021, and has significantly deteriorated starting in May 2021. Our backorder for the components we need is approaching the entire number of devices sold by Telular in 2020, and is more than half of what we sold in the first half of this year. In the Third Quarter of 2021, Telular has received only approximately 60% of the radio modules it received in the Third Quarter of 2020. These radio modules use the Intel chip and are provided by Sierra Wireless.

Because of the severity of the microchip shortage and its stifling impact on our ability to meet the AT&T 3G sunset, in May 2021 we co-signed a letter with Sierra, Vivent and several other companies to Pat Gelsinger, CEO of Intel, escalating the chip shortage issue and asking for an immediate increase in our allocation of chips, due to our security and life-safety activity. Nothing came from that effort.

On May 2, 2021, Intel's CEO appeared on 60 Minutes, and indicated that the microchip shortage will continue well beyond the AT&T 3G Sunset: https://www.detroitnews.com/story/tech/2021/05/02/intel-ceo-says-chip-shortage-last-couple-years/115948508/

Notably, both Intel and AT&T have lobbied Congress to fund support for expanding the chip manufacturing industry in the United States. https://www.reuters.com/technology/tech-giants-join-call-funding-us-chip-production-2021-05-11/ Unfortunately, such help will come too late to help manufacturers trying to meet the AT&T 3G sunset.

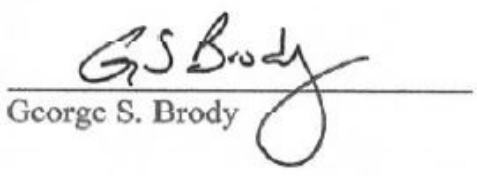
Telular expects that certain of the largest members of the alarm industry order such a high volume of microchips that they may be able to influence their supply chain experience positively (just as AT&T has historically been able to do). However, Telular and the 6000+ alarm companies to which it provides equipment and services have not been able to obtain all of

the microchips needed to meet AT&T's 3G sunset, and absent an extraordinary turnaround of world events this will not happen in a timely fashion. Moreover, even if all of the necessary chips arrived tomorrow, it will take months for Telular to manufacture the finished alarm systems and deliver them to its customers, and for its customers to gain access to all of their protected subscribers and install the new systems. Telular understands that other members of the alarm industry are in a similar boat. Therefore, it is absolutely clear that the extension of AT&T's 3G sunset requested by AICC is needed, in order to save lives and property.

With regard to AT&T's claim that alarm companies can resolve the alarm device microchip shortage by simply paying more money for chips: Telular is a significant user of microchips, yet has not been able to obtain the needed supply of chips despite paying a premium mark up of chip prices. Given the severity of Telular's supply issue, the company reached out to both Verizon and AT&T to try to obtain the thousands of chipsets it needs. Verizon was able to help us obtain only 262 units, even though Telular agreed to pay a greater than 50 percent mark-up. AT&T was unable to obtain any chipsets for Telular.

Sierra Wireless attempted to obtain 16,000 units for Telular, which again offered to pay a substantial premium. However, the chips shopped to Sierra turned out not to be configured in a way that would allow use in our equipment.

I hereby certify under penalty of perjury that, except for those matters of which the Federal Communications Commission may take official notice, the factual assertions set forth above are true and correct to the best of my knowledge.

Signed: 
George S. Brody

Dated: September 13, 2021

Attachment C

Response of Vivint Smart Home, Inc. (Vivint) to AICC

801.229.7679
4949 N 300 W
Provo, UT 84604
vivint.com

9/10/2021

Re: Vivint's response to the statements made about Vivint by AT&T in their comments to the AICC's Petition for Emergency Relief in 3G Sunset Transition for Central Station Alarm Subscribers – GN Docket No. 21-304 submitted 8/30/2021

In response to Vivint's success in adding new subscribers during the pandemic, new subscriber growth is vastly different from service calls to existing homes and businesses. New subscribers have sought Vivint's solution to protect/enhance their home during an unprecedented time of heightened health and public safety concerns, and because of this, are willing to let technicians into their home or business to perform the installation. The motivations of homeowners who need new systems are not at all comparable to the motivations of existing customers who need to have the 3G upgrade performed. Even in non-pandemic times it is difficult enough to convince the customer that they need an upgrade and that they need to schedule a technician to perform the work in their home or business. The pandemic exacerbates the situation because they don't want to take the risk of potentially being exposed to Covid from a technician doing an upgrade that they likely do not understand is critical, despite our repeated and persistent communication.

In response to chip shortage challenges, the equipment used for a new install is not the same as is used for a 3G cellular upgrade. Entirely new panels were used for new installs. These had been ordered well in advance because Vivint controls its own production and can forecast what will be needed for new installs each year. The equipment used for 3G upgrades is just the cell radio and SIM card. These radios are specific to the older equipment where they get installed. These systems are different from what Vivint now installs for new customers. The 3G radio swaps are not considered a full upgrade that would use any of the full system stock. The radios are also common equipment used by other companies which are also trying to upgrade their 3G customers and sourced from the same manufacturers. The chip shortage has limited the production of these radios and has also affected the number of customers that Vivint has been able upgrade to date.

Attachment D

Declaration of Melissa Brinkman
CEO of Custom Communications, Inc. d/b/a Custom Alarm

DECLARATION OF MELISSA BRINKMAN

I, Melissa Brinkman, am Chief Executive Officer of Custom Communications, Inc. d/b/a Custom Alarm, headquartered at 1661 Greenview Dr SW, Rochester, Minnesota 55902. Custom Alarm is a family-owned and operated electronic security company that provides security-related services for residential, business, and industrial customers in and around the Rochester area. Custom Alarm was founded in 1968. We are one of the thousands of smaller alarm service providers in the country, currently serving less than 10,000 customers. Custom Alarm is an important employer in our community, and has been recognized by Workforce Development Inc. with the title of "Best Places to Work in Southeast MN", for the last five years.

Custom Alarm supports the Petition for Emergency Relief filed by the Alarm Industry Communications Committee (AICC) concerning the 3G sunset of AT&T, and would like to address some of the claims in AT&T's August 30, 2021 Opposition filing.

With regard to AT&T's claim that the 3G sunset crisis is due to the alarm industry's "dragging its heels": Custom Alarm set about replacing 3G radios as soon as AT&T announced it was giving the industry three years to accomplish this upgrade, in February 2019. We began ordering LTE alarm cellular radios; notified our customers of the need to upgrade, by letter, emails, texts and items in our newsletter; and we began the actual upgrade process in a timely manner. As a small business with limited resources and technicians, we are not in a position to order all of the replacement radios at once and install them all at the same time. Our retrofit installations were proceeding with our concentrated focus in 2019 and leading into 2020 we were on schedule until the Covid-19 pandemic hit in March 2020. With the pandemic shut down, we were lucky if we could schedule one third of the customer appointments we had previously done. Our ability to perform even this reduced trickle of retrofits was further hurt by the fact that our installers were at risk of getting or being exposed to Covid, and have to quarantine.

With regard to AT&T's claim that the alarm industry had notice of the need to do a 3G transition well before its February 2019 announcement: We had barely finished the upgrade from 2G to 3G in 2016, when AT&T claims it began talking about the eventual need to replace 3G radios. Quite honestly our customers were understandably not interested in spending the money on the upgrades while their current radios were nearly new, operating fine and the 'sunset' was still 2-3 years away. Alarm radios generally have a substantial duty life, and it took time for replacement alarm radios to be developed. Therefore, it was not unreasonable for alarm companies to start the 3G upgrade process when we knew that AT&T was indeed actually implementing its 5G network, and when replacement radios actually existed. Also, early on when the AT&T's new network wasn't even fully operational, the 3G worked more reliably and better. Our actions put us in a position to finish the 3G upgrade in a timely manner, if not for the once-in-a-lifetime pandemic and supply chain problems. We are about half way through the upgrade process, but will not finish in time in the absence of a rapid resolution of the equipment shortage, and the end of Covid-related customer hesitancy.

With regard to AT&T's claim that the Covid-19 pandemic had only a brief impact on our ability to retrofit our current 3G-based customers: Following the pandemic shutdown, we saw customer cancellations and reluctance to schedule a replacement appointment from March into August 2020, which would not be considered a brief impact. While there was a brief easing in customer reluctance in late Summer 2020, the world-wide chip shortage and supply chain issues soon interfered with the replacement process. It is difficult to schedule retrofit appointments when we still do not know whether we will have the replacement radios on hand. Since March 2021 the supply chain issues have gotten worse and between the uncertainty of product availability and constant changing delivery dates, and more recently the spread of the Delta variant and overall growing concern of the impact of Covid, it is once again difficult to schedule appointments for the trickle of replacement radios we do receive, especially with business customers that are once again closing and/or limiting access to their buildings. Also, with the Covid-related labor shortage, it has been difficult for us to find and hire additional and/or replacement alarm installers.

With regard to AT&T's claim that alarm companies can resolve the worldwide microchip shortage by simply paying more money for chips: Custom Alarm has incurred significantly greater costs obtaining replacement equipment, and paying these higher costs has not resulted in the company being able to obtain the equipment it needs to take care of our customers. Everyone from manufacturers to distributors to shipping/delivery companies have all enacted price increases and surcharges making it even more costly to complete these upgrades.

With regard to AT&T's claim that alarm companies should have simply stopped activating new customers: No small, much less large, business can survive by refusing to bring on new customers. And quite frankly that is not a business practice any business would adopt, I challenge anyone to take that approach and think they can stay in business. This is particularly true for Custom Alarm, since a significant portion of the persons needing our services work in healthcare. With all hospitals and other medical facilities, there is a constant influx of new employees. There is a constant flow of persons needing alarm services, and as a provider of safety-related services, it is Custom Alarm's duty to provide such protection. In the midst of a pandemic (in which the children of healthcare workers and others must be home on their own much more), a spike in crime, and other potential threats, it is vital that the citizens of Rochester and the surrounding areas, have access to reliable alarm services to detect potential dangers such as fire, home invasion, carbon monoxide poisoning and other environmental threats. In Minnesota, which sees winter temperatures well below 0 degrees Fahrenheit on a regular basis, another important service we provide is monitoring to identify when inside temperatures drop to dangerous levels. The importance of having water and low temperature detectors which can minimize the risk of freezing and bursting pipes or other dangers that come with extreme cold temperatures is significant. We pride ourselves on protecting families, children, pets, homes, and businesses.

With regard to AT&T's claim that the alarm industry's 3G extension request is "anticompetitive" and based on greed by seeking "more lucrative new customers": New customers in general generate about the same revenues as existing customers. However, it costs more to get new customers than to retain existing customers. Therefore, there is no incentive to ignore existing customers in favor of new customers. Instead, alarm service providers, especially small business providers, must both retain existing customers and provide protection to new ones

in order to stay in business, much less grow their business. This is especially true in a tight knit community like ours, where both our existing and new customers are our neighbors, friends and family; we see and interact with them on a regular basis in the community. Therefore, I feel a personal responsibility to extend and provide the best service and protection to anyone needing this service, or any services we can provide as a company. AT&T's suggestion that we stop accepting new customers, and the equipment acquisition process be turned into a bidding war, would only result in more consolidation of the alarm industry; and as a small provider, Custom Alarm would lose new customers and perhaps even fail, with our customers going to the largest providers. That would be "anticompetitive".

I hereby certify under penalty of perjury that, and except for those matters of which the Federal Communications Commission may take official notice, the factual assertions set forth above are true and correct to the best of my knowledge.

Signed: _____
Melissa Brinkman

Dated: September 13, 2021

Attachment E

Declaration of Jeremy Bates
President of Bates Security

DECLARATION OF JEREMY BATES

I, Jeremy Bates, am President of Bates Security, headquartered in Lexington, Kentucky. Bates Security is a locally-owned and operated electronic security company that provides security-related services for residential, business, educational, and industrial customers in Lexington, Kentucky and the surrounding areas, with branch offices in Prestonburg, Kentucky, Vero Beach, Florida and Jacksonville, Florida and Lake Placid, Florida. Bates Security was founded in 1984, and is one of the thousands of smaller alarm companies in the United States. We currently serve less than 20,000 customers. My company is our family's business and as a second generation family member to work, I have grown up in the security industry. Since college graduation I have worked full time for our business 26+ years. I have worked in almost every position of the company over the years and now currently serve as it's president.

Bates Security supports the Petition for Emergency Relief filed by the Alarm Industry Communications Committee (AICC) concerning the 3G sunset of AT&T. And we reject claims by AT&T's August 30, 2021 Opposition that the 3G sunset crisis is due to the alarm industry's "dragging its heels", planning poorly, or engaging in "anticompetitive" behavior. We also reject AT&T's claim that (1) the Covid-19 pandemic had only a brief impact on our ability to retrofit our current 3G-based customers and (2) that alarm companies can resolve the worldwide microchip shortage by simply paying more money.

Bates has at all times been diligent about addressing AT&T's 3G sunset. Following AT&T's announcement in 2019 that its 5G service was actually being rolled out, and establishing the February 2022 sunset date, Bates moved forward with acquiring replacement equipment, and notifying its affected customers of the need to replace their radios. Bates notified its customers starting in 2019 with mailings, and followed up with multiple announcements on its website. Bates was able to begin retrofitting customer radios, but then its efforts have been considerably slowed by the Covid shutdown starting in March 2020. Covid concerns resulted in appointment cancellations from March 2020 until well into the Fall, and slowed customer acceptance of the retrofit process; and we still have a significant group of customers for which we have not been able to schedule a replacement appointment despite multiple tries. The emergence of new strains of Covid, and the very concerning non-stop discussion of those strains in the news cycle, have contributed to our continuing difficulties with the retrofit, with new scheduling problems. On the commercial (versus residential) side of our business, retrofitting 3G radios has been greatly hampered by the fact that many of the businesses we serve have simply been closed for many months.

Another major problem caused by the virus has been its impact on our personnel. We have had a number of technicians miss significant stretches of work because they either caught Covid, or had to quarantine due to a possible exposure. More recently, we have suffered because of the severe labor shortage that the Covid shutdown has created. We have seen a significant turnover of our trained technicians, even though we have paid raises and bonuses to avoid that

outcome. We have had a very difficult time hiring replacement technicians, and currently have had to settle for very inexperienced techs when we have been able to hire at all. Overall, we find ourselves in a place where customer reluctance is only part of the problem. Our difficulty in hiring replacement staff is another unforeseeable obstacle caused by Covid that will hurt our ability to meet the 3G sunset. And the Delta variant is once again keeping a portion of our already depleted workforce from performing installs.

Another significant problem is the difficulty getting replacement customer radios because of the worldwide microchip shortage. We began seeing a slowdown in late Summer 2020, and the supply has fluctuated since. We have experienced backorders for weeks or months on multiple occasions; and currently we are completely out of two devices we need, despite our willingness to pay the inflated prices that have been charged since the shortage started.

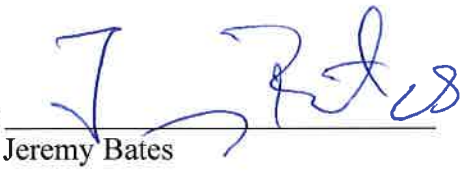
Thus, rather than being a blip in our retrofit efforts, the fallout from Covid has actually gotten worse in our experience. Despite the many obstacles caused by the virus and supply chain problems, we have managed to replace more than half of the 3G radios used by our customers. However, completing the rest of the upgrades by the fast-approaching deadline is in serious doubt, unless we are given an extension. And we can say with certainty that if there had been no pandemic, we would have been in a position to complete the retrofit.

Finally, I want to address the claim by AT&T's opposition filing that the alarm industry has caused the 3G sunset crisis out of corporate greed and anticompetitive motives. First, AT&T claims that alarm companies should have stopped taking any new customers so they could devote all LTE radios to retrofits. That is a nonsensical notion on multiple levels. As AT&T is no doubt aware, no business can survive if it starts refusing customers, especially a small business such as ours in the middle of a pandemic that has harmed the U.S. economy a great deal. AT&T's suggestion would only result in more consolidation of the alarm industry, as small providers like Bates lose new customers and perhaps even fail, with their customers going to the largest providers. That would be an "anticompetitive" outcome.

Second, new customers have amounted to only 15 or 20% of installations we have done, and not all necessitated an LTE radio. Thus, any radios used for new customers barely put a dent in the number needed to complete the retrofit.

Third, and most importantly, we are in the business of life safety. Several of the new customers have been coming to us because they are concerned for their safety and health; and the virus, Covid recession, riots, arson and crime spikes throughout the Country have made alarm protection all the more important. We have expended substantial resources attempting to do the 3G retrofit, including significant equipment price increases, higher wages and bonuses, and trying to operate our business with frequent employee absences. Yet like many if not most alarm companies we are aware of, we are not charging our customers for the 3G upgrade. Instead, our focus is on avoiding a loss of protection of our customers from harms like fire, home invasion, carbon monoxide poisoning and medical issues.

I hereby certify under penalty of perjury that, and except for those matters of which the Federal Communications Commission may take official notice, the factual assertions set forth above are true and correct to the best of my knowledge.

Signed: 
Jeremy Bates

Dated: September 10, 2021

Attachment F

September 13, 2021, Letter from John Brady
CEO of Connect America/Lifeline

ConnectAmerica

September 13, 2021

Mr. Lou Fiore
Chairman of AICC
7018 Jones Branch Dr., #510
McLean, VA 22102

Dear Mr. Fiore,

As the Chief Operating Officer of the largest Personal Emergency Response company in the United States (Connect America & Lifeline), I read with interest and amazement AT&T's August 30, 2021, Opposition to the AICC Petition requesting an extension of AT&T's pending 3G sunset on February 22, 2022. Hard to imagine this was the same company that has been wooing the life safety industry for the last ten years to evolve to cellular communication-based services to help preserve property and to protect lives.

In fact, the Alarm Industry began planning diligently for the transition from 3G to 4G devices when AT&T made the sunset announcement in 2019. Our industry had already experienced and completed the 2G to 3G transition in 2017, at great expense to the industry but we saw the evolution to 3G as an extension of our services to the public – as did AT&T.

We changed out over 1.5 M 2G devices, but with the assistance of AT&T and other carriers, we expanded the provision of life safety services to over 6M subscribers using 3G mobile devices as we approached 2020 that would need to be transitioned to 4/5G. Upon AT&T's 3G sunset announcement, we preplanned our labor and equipment needs that would be necessary to transition to 4G; and as we entered 2020 – a good deal of the industry participants had already started the 3G replacement at no cost to our residential customers, and at cost for the thousands of commercial intrusion and fire subscribers.

We, in fact, did not "drag our heels" rather we went into action. Just in the PERS (Healthcare and Medicaid) segment of the industry alone, the major participants had begun to expend well over $50M (at no cost to a subscriber) to visit each subscriber's home, transition the device and retrain the elderly subscriber on the use of the new 4G device. Eighty percent (80%) of PERS users are over 78 years old. We have found that while some PERS devices are plug and play, it is irresponsible, risky and often against the wishes of family and/or the care agency to ship a replacement unit to a person that is usually greater than 78 years of age and expect them no not only install it correctly but also figure out how to use it. In fact, Medicaid requires that PERS users covered by Medicaid have installation and training. We were making good progress when the Pandemic hit in March 2020 that shut down our installers' ability to go into subscribers' homes at the request of the Medicaid Agencies in all of the states of the U.S.

ConnectAmerica

Just as the Pandemic unfolded, our companies spent millions on PPE (masks, booties, sanitizing fluids, gloves, etc.) to try to make it safe for our installers to visit homes but to no avail - so, in fact, the Pandemic had a significant impact on our ability to transition our subscribers to the new 4G technology and thus allow us to continue to maintain their safe and independent living space after the sunset. In fact, we did not lose only "two months" rather we lost over 9 months waiting for the US to get vaccinated. During this timeframe, and even today with the new Delta variant expanding, our subscribers seek to maintain their independence even more than before March 2020, while maintaining their distance and health.

On the Commercial front - we could not even get into buildings for the majority of 2020 to retro the fire and intrusion systems that we all rely on for safe keeping in our work environments. The notion that our industry has only focused on generating new customers at the expense of our 3G customers is absurd - yes, we have continued to protect new customers (mostly with 4G cellular based equipment that AT&T is happy to bill us for the cellular communication) - the new customers sought protection during difficult times, but the healthcare side of the business declined significantly for the same reasons - the elderly did not feel safe in allowing anyone, even a well-protected installer into their home.

As to "anticompetitive actions", even AT&T continued to compete in our industry for new customers.

So our industry's request to the FCC to have AT&T extend its sunset to match that of Verizon's - 12/2022 is not out of "greed", "poor planning", "foot dragging" or other controllable business choices - rather - the real delays with our implementation of the 3G transition were the result of the worldwide pandemic and the efforts by all of us to "social distance" and protect each other by avoiding contact, as the scientists and our government has demanded.

This is simple - it is about protecting and saving lives - especially for the elderly that remain our most vulnerable population that will lose their ability to be protected on a 24/7 basis by our professional monitoring associates after 2/22/22 if we can't get to make the transition. The request is simple also - extend the sunset - help our industry continue to save lives and protect as AT&T has been professing as they were privileged to deploy the FirstNet Response network around the US for the benefit of our First Responder's and the public that they serve everyday.
On behalf of Connect America/Lifeline and our many elderly subscribers, we thank the FCC for considering the AICC Petition and hope that the "facts" will help them with their deliberations.
Sincerely

John Brady
Chief Operating Officer
Connect America/Lifeline
"Helping to save Lives"

3 Bala Plaza West Bala Cynwyd, PA 19004
www.MedicalAlert.com • Office: 800.420.5900 • Fax: 484.448.2088

Attachment G

September 13, 2021, Letter from Jack Unroe, CEO, Bay Alarm
To Louis Fiore, Chairman, AICC

BAY ALARM
SINCE 1946

CORPORATE OFFICE
5130 Commercial Circle, Concord, CA 94520
Direct: (925) 935-1100 • FAX: (925) 947-1020

A Family Business Since 1946
Cal Lic. ACO 28
Contractor's Lic. #880138

www.bayalarm.com
Sales: 1-800-610-1000
Service: 1-800-470-1000

John P. Unroe
Chief Executive Officer

September 13, 2021

AT&T's response to the Alarm Industry Communications 3G Emergency Relief Petition demonstrates a critical lack of understanding of how alarm companies operate. It does not reflect how our existing subscriber base is reacting to the pandemic.

Yes, the signing of new subscribers has increased during the pandemic. But these are home and commercial building owners who have affirmatively determined that the pandemic and increased street violence necessitate upgraded security. In the case of business owners, the need for added security was heightened as they were away from their businesses for longer periods of time and for homeowners, they felt the need for added protection because their families were spending more time at home. This is fundamentally different from existing customers who have working security systems and who are fearful and can see no reason during the pandemic to allow a technician into their home or business during a deadly pandemic to switch out a radio will that work till next year. These customers believe that the risk is not worth the reward and that we can simply come out and replace the radio when the pandemic is over. Unfortunately, there just isn't enough time to replace these radios when the pandemic is over – whenever that happens. Not to mention the fact, that the number of new installations is a fraction of the number of existing radios that need to be replaced. Despite these obstacles, Bay Alarm Company has not delayed in any way our continued push to get into all locations where we have a 3G radio so that we can do the exchange.

There remains a core group of subscribers that are simply not allowing even a fully vaccinated technician into their premises. Frankly, considering this, I find some of the statements made by AT&T to be cavalier and rather shocking. It seems that their position is more concerned with market share than public safety and saving lives. Neither AT&T nor Bay Alarm caused COVID-19 to have the global impact that it now has. The difference is that Bay Alarm is working with the realities of the pandemic while AT&T's position is the pandemic has had no impact.

To be very clear, the alarm industry is not asking for an extension of the AT&T sunset by years or even a year, but only from February to December of 2022. In fact, we are simply asking them to give us something close to the full three years they originally offered, but have been cut short by an act of God. This will make the difference between lifesaving signals that are received and those that aren't resulting in loss of life, and increased fire and theft.

Respectfully,

Jack Unroe

Jack Unroe, Chief Executive Officer
Bay Alarm Company
5130 Commercial Circle Concord, CA 94520